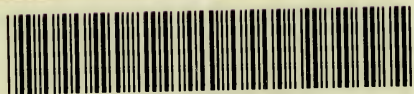


MEDICAL ETHICS  
AND  
MEDICAL ETIQUETTE

— BY —

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VANDERPOEL	FILEHUR
HUN	WEY
ORDRONALX	ROOSA
AGNEW	JACOBI
HOPKINS	

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AN  
ETHICAL SYMPOSIUM

BEING A SERIES OF PAPERS CONCERNING  
MEDICAL ETHICS AND ETIQUETTE  
FROM THE LIBERAL STANDPOINT

BY

ALFRED C. POST, WILLIAM S. ELY, S. OAKLEY VANDERPOEL,  
LEWIS S. PILCHER, THOMAS HUN, WILLIAM C. WEY,  
JOHN ORDRONAU, DANIEL B. ST. JOHN ROOSA,  
CORNELIUS R. AGNEW, ABRAHAM JACOBI,  
AND H. R. HOPKINS.

WITH AN APPENDIX

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"Why is my liberty judged by another conscience?"

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NEW YORK  
G. P. PUTNAM'S SONS

27 & 29 WEST 23D STREET

1883

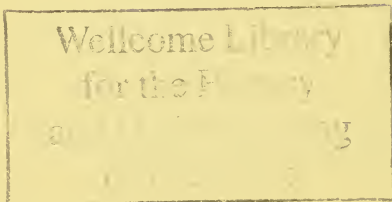
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26

## PREFACE.

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The collection of papers herewith presented in the form of a literary symposium, has its origin in a suggestion made by the publishers to a member of the "Society for the Prevention of the Re-enactment in the State of New York of the Present Code of Ethics of the American Medical Association." It was suggested to this member, that inasmuch as the distinguished President of that Association had written a volume on "Medical Ethics and Etiquette," apparently with a view to defend the old code, and to assist in its re-enactment in this State, it would be expedient for some of the representative members of the Profession in the State of New York, to state why they consider Dr. Flint's arguments insufficient, and why they believe the re-enactment of the old code would be injurious to the interests of the Profession, and of the community, which it is the duty of the Profession to serve.

This suggestion of the Messrs. Putnam, was cheerfully adopted by the Council of the Society opposed to the re-enactment of the old code, and an editor was appointed to collect the necessary papers, and to arrange them for publication.

The object of this little book, therefore, is to place before the reader, the motives which induced a large number of the medical men of the State of New York, to dissent from some of the rules, which have hitherto controlled and guided them in their intercourse with themselves and the public. The action of the Medical Society of the State of New York, in modifying its code of ethics, has led to warm discussion and criticism ; some of it has been unfavorable, because the critics have not always been in a fair position to judge of the reasons why the change was desirable. That it was desirable there is no doubt, and the State Society so decided after a long and careful consideration of the circumstances of the case.

Probably a great deal of the adverse criticism has been induced by a misunderstanding of the position of medical affairs in the State of New York, as well as the object which was sought to be attained by the modification in the code. This will be removed by the explanation and

statements made by the writers who have consented to furnish the articles contained in this book, in refutation of the charges made that the Medical Profession had degraded its good name by countenancing, if not allying itself with, quackery. This is unqualifiedly false. The medical profession of the State of New York has not done any such thing, nor has it the least desire to do so. The names of those prominently identified with this movement, names known and honored throughout the country, is a sufficient guarantee that no attempt to dishonor the fair name of the Profession of Medicine would receive the slightest favor at their hands. It had been long felt, that the code of ethics which obtained in the State of New York was an instrument which, however good at the time it was framed, no longer met the needs of the Medical Profession in the State; that its restrictions, if complied with, were embarrassing and absurd; that it did not command the respect of the Profession, and that it was no longer a living power, in guiding the sentiments of the medical men of the State. Moreover, the restrictions touching consultations with so-called irregulars, savored too much of the arbitrary rules of a trade-union, gave too strong a handle to quacks by raising the cry of persecution

on partisan grounds, and were a serious obstacle in the way of legislative medical reform. Hence the necessity for a modification was felt to be well grounded, the only question being how to make the change so as to force the attention of the Medical Profession of the country at large to the shortcomings of the code of the American Medical Association, which had been adopted as one of the by-laws of our State Society. From past experience it was felt that it would be useless to present the matter to the American Medical Association for action, and it was decided that the change should be made by the State Medical Society, leaving the future to decide as to the wisdom of the movement. That it would arouse discussion and provoke criticism was expected, and it is evident to those who have followed the matter in the medical journals, that this expectation has been realized; and although some of the criticisms bestowed upon the advocates of this measure savor of bigoted intolerance, there has been in the main a disposition to discuss the question in a temperate tone. And this is a healthy sign, for much of the blind veneration of the code "of the fathers," has been bred more of ignorance than of knowledge, and the more it is read and studied, the more



apparent becomes the fact that the day of its usefulness has passed. It is only a question of time as to the abolition of the code, and when that time arrives, the Profession of Medicine will be rid of one of the greatest obstacles to a proper reform in medical matters.

F. R. S.

New York, *September*, 1883.



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AN ETHICAL SYMPOSIUM.



REASONS FOR PREFERRING A LARGER LIB-  
ERTY IN CONSULTATIONS THAN THAT  
WHICH IS ALLOWED BY THE CODE OF  
ETHICS OF THE AMERICAN MEDICAL  
ASSOCIATION.

BY ALFRED C. POST, M.D., LL.D.,

PRESIDENT OF THE FACULTY OF MEDICINE, UNIVERSITY OF THE CITY OF  
NEW YORK.

My first reason is, that it is the natural right of every practitioner of the healing art to act, according to the dictates of his own conscience, for the benefit of those patients who may apply to him for relief. This is a right of which he ought not to be deprived by the action of a bare majority of his colleagues in the profession, or even by that of a very large and decided majority. He ought undoubtedly to give due weight to the almost unanimous opinion of the profession in opposition to his proposed action; but, even in such an extreme case, the ultimate decision must be left to his own conscience. And if, after full consideration of the arguments which have been brought to bear upon the case, he should come to the conclusion that he would consult

the best interests of his patient by acting in opposition to the prejudices of a large majority of the profession, it appears to me, that the path of duty is plain, and that the interests of the patient should outweigh the prejudices of the profession.

The advocates of the old code appear to labor under the misapprehension, that those who ask for larger liberty, are eager to rush into the arms of irregular practitioners, and to consult with them on all occasions. It appears to me that there is no reason for such a belief. The occasions on which regular physicians would invite irregular practitioners to consult with them would be comparatively few. In a small village, where there are but two physicians, one of whom is a regular or unsectarian practitioner, and the other a homœopath, an obstetrical or surgical case may occur, in which the attending physician needs an intelligent and trained assistant to aid him in an operation, on the skilful performance of which the life or the well-being of the patient may depend. Under these circumstances, I think that the interest of the patient is to be regarded as having far higher claims than any abstract or theoretical views as to the dignity or standing of the profession. An intelligent and highly



educated homœopath may have acquired special skill in physical diagnosis, and I can easily conceive, that a neighboring unsectarian physician may consider it advisable to avail himself of the advantages, which he may derive from a consultation which may throw new light upon an obscure case, and thus aid him in its proper treatment.

But the chief benefit resulting from a greater freedom in consultation would be, that regular practitioners, not committed to any sectarian dogma, but having acquired special skill and reputation in one or more of the branches of the healing art, would be called in consultation in cases which have been under the care of irregular or sectarian practitioners, and would confer the benefits of their experience and skill on patients who would otherwise be deprived of these advantages. My belief in the superiority of catholic and rational medicine over sectarian dogmatism is so decided, that I have the full conviction that, if perfect freedom of consultations were allowed, the effect would be to bring twenty patients under the influence and control of rational physicians, where a single patient would be brought under the influence of a sectarian dogmatist.

A strong reason for insisting on liberty in

consultations, and for opposing the reënactment of the arbitrary code of the American Medical Association by the Medical Society of the State of New York, is the bitter and persecuting spirit which has recently been exhibited by some of the advocates of the old code. Among numerous instances in which there has been an exhibition of such a spirit, I would mention the recent action of the New York Academy of Medicine, and that of the Medical Society of West Virginia.

At a packed meeting of the New York Academy of Medicine, where the advocates of the old code were assembled in force, having received private notice of an intended movement in favor of the code, while no such notice had been given to the other fellows of the Academy, a distinguished fellow openly announced that it was the intention of those who had thus surreptitiously obtained a working majority, to throttle discussion in the Academy, and to prevent a fair expression of the will of the real majority.

At a meeting of the Medical Society of West Virginia, held at Grafton on the 16th and 17th of May, 1883, the following resolution was passed :

*“Resolved, That this Society recommends to*

the Medical Profession of West Virginia, that they support by their subscriptions only such medical journals, and recommend their patients to such specialists, and direct their students only to such medical colleges as have shown by their unequivocal attitude, their recognition of the pure and unselfish aspirations of our calling, and their loyalty to the high and noble interests of rational medicine."

Now, if this language be stripped of its high-sounding platitudes, and its real meaning be expressed in plain and familiar words, we shall be able to appreciate its spirit, and to judge to what extent it is in conformity with the enlightened sentiment of the age in which we live.

I will endeavor in simple words to explain the true significance of this resolution. If the editor of any medical journal shall have the hardihood to express his real sentiments in favor of a larger liberty in consultation than that which is allowed by the code of the American Medical Association, such expression of opinion is to be met, not by manly discussion, but by cutting off the supplies, and thus starving the editor into submission. If a medical man has acquired a high degree of skill, and a widely extended reputation, in any special department of the healing art, and if he should rise

above the narrow prejudices of an intolerant party, and should endeavor to maintain the true dignity of the medical profession, by giving larger individual liberty to its members, he must be boycotted by the upholders of the code.

And if a medical college should devote its attention to its legitimate work of indoctrinating its pupils in the true principles of the science and art of medicine, and should fail to inculcate unreasoning submission to the requirements of an antiquated and arbitrary code, every effort must be made to induce medical students to withhold their attendance, until the members of the faculty shall be forced to abandon the free expression of their opinions, and to yield to the dictation of an arbitrary and tyrannical party in the profession.

If such are the principles by which medical men are to be governed in their relations to each other, and to the community, we can no longer claim to be considered as members of a liberal profession, but as constituting a narrow-minded and intolerant sect, regardless of the true interests of humanity, and of the opinions of intelligent and cultivated men in other professions.

I am satisfied in my own mind that the true dignity of the medical profession, and its great-

est usefulness to the community, can be best maintained by allowing to the individual members of the profession a larger liberty than the over-zealous advocates of the old code are disposed to grant them. And I believe that it is unwise to stifle the discussion of this subject, or to use coercive measures to influence the action of medical men in opposition to their convictions of right.

# THE QUESTIONABLE FEATURES OF OUR MEDICAL CODES.

By WILLIAM S. ELY, M.D.,

PHYSICIAN TO THE ROCHESTER CITY HOSPITAL.

The agitation which resulted in the recent revision of the Code of Ethics of the Medical Society of the State of New York, has led many to seriously consider the questionable features of our medical codes.

In the endeavor to examine the subject dispassionately, it soon became apparent that some change should be made in the rules which had governed the profession of the State, if our principles and practice are to be in accord. The evidence of this, was manifest in the existence of a wide-spread disbelief in the wisdom of certain restrictive features imputed to the old code, and in a growing conviction that many of its provisions are puerile or unnecessary. More than a third of a century has elapsed since its adoption. In this period the professional environment has undergone great change. Sects in medicine have received legal recognition, and the relation of the regular profession

to all forms of irregular practice has been for some years under discussion. In religion there has been a tendency to a simplification of creeds, and lessened sectarian hostility, and a similar movement is observed in medicine. The Committee, which was appointed in 1881 to revise the code, was thus led to recommend such a modification of existing rules as would be in harmony with tendencies which they hoped would finally be salutary for the profession. As is well known, the new code was adopted at the annual meeting held in 1882, and reaffirmed at the annual meeting of 1883. Converts to the changes made are now so numerous that it can hardly be expected that the old code can be reinstated in general confidence and respect. Apart from their number, the character and standing of the gentlemen who have felt that a change in medical ethics is advisable are a strong evidence of the significance of the movement. Many of them are leaders in medical thought—physicians of advanced years and wide experience, not a few of whom have been honored with the highest offices in the gift of the profession. These gentlemen feel that the movement to which they are committed is one which concerns the dignity, honor, and advancement of their calling.



Certain of the adherents of the old code have charged their opponents with having inflicted a lasting injury and disgrace upon the profession of the State. We claim that this assertion is both untrue and unworthy of its source. The authors of this statement fear that, in the breaking down of old barriers and the according of the right of private judgment to individuals in questions relating to medical practice, serious harm is to come to themselves and to the profession at large. So strong is this feeling, that coercive and proscriptive measures have already been brought to bear upon some of their brethern of advanced views, and other punitive procedures have been suggested which are discreditable to a liberal profession.

It has been repeatedly shown that the opponents of the new code, base their principal objections to it upon the clause which relates to consultations. Thus far most of the discussion has turned upon this point. But with very many this is really a secondary consideration. The agitation was started and is being carried on largely by gentlemen who prefer *no code* at all—or would reduce it to a simple declaration. They deem a code with penalties impracticable, and the attempt to prescribe manners and con-



duct for the sick-room, as offensive to good taste. They voted for the new code, and accept it provisionally, as a step toward their more advanced position, and thus better than no change whatever. Were the only question that of consultations, there would be with many no need for the controversy, for when they examine the old New York code adopted in 1823, and the code of the American Medical Association adopted in 1847, they find that neither furnishes absolute ground for a refusal to consult with legally authorized practitioners.

The New York code of 1823 says : " All the individuals composing the Colleges and Medical Societies constituted by the Legislature of this State, are by them qualified physicians and surgeons " ; and further on : " There is no difference between physicians, but such as results from their personal talents, medical acquirements or their experience, and the public, from the services they receive, are the natural judges of these intellectual advantages."

The code of the American Medical Association, Art. IV, Sec. I, says : " A regular medical education furnishes the only presumptive evidence of professional abilities and requirements." \* \* \* " But no one can be considered as a regular practitioner, or a fit

associate in consultation, whose practice is based on an exclusive dogma, to the rejection of the accumulated experience of the profession, and of the aids actually furnished by anatomy, physiology, pathology, and organic chemistry."

We all know that the majority of sectarian physicians of the present day have a regular medical education, and avail themselves "of the accumulated experience of the profession, and of the aids actually furnished by anatomy, physiology, pathology, and organic chemistry." They buy the best medical books and medical journals, and in many cases the publication of the scientific work of regular physicians, is only possible by the patronage of irregulars, which is solicited by publishers' agents. But notwithstanding this the inference that consultations with any except members of the regular profession, are absolutely forbidden by both codes, has been universally made, and has operated as powerfully as though such restrictions were clearly specified.

The unique way in which the consultation-clause of the American code has recently been interpreted, deserves notice. According to a distinguished authority, "the ground for declining professional fellowship is not a professed belief in the vagaries of Hahnemann or in any other dogmas. It is the adoption of the names

homœopathic, eclectic, botanic, etc., as a trademark ; the formation of a sectarian school of practice, announced to the public as such, and the endeavor in divers ways to bring the regular medical profession into popular disrepute." It may thus be inferred that a sectarian physician is a fit associate in consultation, provided only he does not allow his belief and practice to be known by their proper names. We know it to be a fact that the taking down of the " trademark " has been going on rapidly in many cities in this State, and that at present only a small proportion of sectarian physicians retain it on their signs. It is doubtful whether the practitioners named are any longer " banded in order to impair the confidence of the public in the medical profession." From those with this animus, requests for consultation would never come.

Very few would agree with the view of the writer just quoted, and we have therefore to consider the arguments for restriction of consultations, made by the old code advocates. The best reason that they have been able at any time to advance, is the one which asserts that the greater number of irregular physicians are dishonest men. Some, indeed, carry this conviction so far as to declare that all men

practising medicine outside of the regular ranks, without exception, are unworthy of ordinary respect or confidence, and that meeting them is endorsing a fraud. Do irregulars lie, steal, cheat? This is not distinctly said, but they are charged with professing to believe in a dogma in medicine, the limitations of which in practice they frequently transgress. If this is clandestinely done, it is dishonestly done ; but opinions differ as to the character of the act, when the right to vary the practice is openly claimed. As to basing a belief or practice in medicine on a dogma, it is probable that this is often the result of a delusion. The world is full of delusions. The regular profession abounds with deluded men. That sectarian medicine is a monstrous delusion, I affirm, but that it is universally conceived in fraud and maintained as a fraud, cannot be proven.

It is said by the old code men, that irregulars if dishonest, should be denied recognition, and in the rare cases in which they are honest, recognition would be useless, as their views would be too widely opposed to those of the regular physician to expect any good to come from the consultation. To these assertions the answer may be made, that if a regular physician is asked to see a patient with a man known to be dis-

honest, the circumstances of each case may safely govern the decision. Unfortunately, those with the widest experience in the consulting-room, know that dishonesty is not limited to irregulars. The regular physician frequently violates the letter or the spirit of the code. Often he is found misstating to friends the opinion of the consultant, in order to cover his own weak points, or to magnify his knowledge of the case, or to lessen the significance of the consulting physician's services. Many other instances of his insincerity might be adduced. Are consultations with such men refused? The regular physician in the country village occasionally owns or has an interest in the village drug store, where the nostrums which are most extensively advertised are kept and sold. Yet this village doctor is in good standing, and the city physician does not hesitate to consult with him. It is also well known that a physician may be notoriously intemperate or profane, still he is "regular," and these vices add to his popularity with some of his patrons. How shall these irregular regulars be dealt with in respect to professional consultations? Is there any other rule than that which leaves the propriety of a consultation to the individual judgment?

It may be incorrect to say that such men are

regular, and fit associates in consultation, because they are members of county societies, and have not been disciplined, and that certain other men, with perhaps more cultivation, refinement, and honesty, are not fit associates in consultation, because the latter entertain a delusion that declares itself in a sectarian name. To conclude that the honest irregular cannot be reached or benefited by a consultation may also be erroneous. His honesty is in part implied, when he asks for aid. We will assume that he is so deluded as to be giving "moonshine" to his patient. If he really believes in moonshine, there are those who ask whether harm will certainly come to him, to you, and to the profession, if you answer his call for assistance and recommend to him to try the efficiency of, we will suppose, sunshine. You can confidently say that sunshine is one of the most potent influences we possess, and if you can once get it into the sick-room, the evidence of the valuable aid it renders may be apparent to the patient, the patient's friends, and their hitherto deluded doctor. Is any one injured by such a consultation as this? The inference is not justifiable, that consulting with an honest or dishonest irregular is consorting with him or approving of his principles or practice, any more than that inference would be justifiable in the case of the



consultation with the dishonest, profane, intemperate, and nostrum dispensing or commending regular.

When the advice of an irregular physician is desired in a case which is in the charge of any regular, the decision must also turn on the special circumstances. If such consultation is not agreeable, it is easy to withdraw from the case. The more one goes into details, the greater appears the difficulty of establishing absolute rules applicable to all experiences. The elaborate arguments to prove the dangers and uselessness of consultations with irregulars, lack the support of experience. As yet the plan has hardly been tried, and there has never been any evidence on the subject offered, that can be considered to settle the question in its relation to the welfare of the patient and the profession. We believe that the time has come when this question should be left to the discretion of the physician, that, in brief, it is not practicable or wise for the State Medical Society to attempt to restrict its members from thinking and acting in ethical matters which lie above the plane of civil law, and about the propriety of which we now find our best men at variance, as they deem honorable and proper. Those who hold this view are willing to stand in their respective places in

the profession and in society, and be judged by the results of their conduct. If this is found to be unworthy of a physician and a gentleman, then they will receive that treatment which is in accord with the moral sense of the profession in their respective communities. It follows also that, as quackery in medicine is legalized by State laws, no reference should be made in a code to any class of physicians who should be recognized in consultations. All practitioners should be treated in this matter as individual judgment concedes to be proper.

Reflection upon the emergency-clause in the new code, convinces me that as usually construed it may often be but a meagre concession to the dictates of humanity. Must the unforeseen occurrence which constitutes an emergency be patent to the ordinary observer? Must a patient, for example, be bleeding to death to permit one to disregard code restrictions in his behalf? But who can tell in the progress of ordinary critical illness, what visit or what advice may determine the saving of a human life? The early detection of a serious latent complication, the prompt correction of an erroneous diagnosis, the timely administration of a certain remedy, all may as truly save a life as though we held our fingers on a bleed-



ing vessel, or lifted a drowning man from the water. When professional men of acknowledged ability and great reputation, have said that they could not tell how many thousands of dollars they have lost by adhering to the old code, in declining consultations with irregulars, I have wondered whether they have attempted to make any estimate of the number of lives and limbs that have been lost, by their refusal to give of their great skill when solicited by patients who they thought had a deluded or dishonest doctor. There has never been any argument that could convince the suffering patient or his anxious friends, that such refusal was at times other than inhumanity.

If our restrictive codes are the embodiment of the greatest justice between man and man, it is a remarkable fact that a jury of intelligent laymen has never been found who would approve of them. Neither the press, the pulpit, nor the bar, has been in accord with us, and we have met their arguments, not with reasons that were convincing, but with the assertion that they were all incompetent to judge correctly of our ethical relations. Does the intelligent consideration of such a question depend on the possession of some other sense than common-sense, guided by a proper conception of

common ethics? Does it depend in any degree on a technical education received at a medical college? If it does not, then the adherents of the old code are antagonizing not only the new code men and the no code men, but the entire body of the laity.

Regular physicians claim to be scientific men. Now, science, as we understand it, does not ask a man what he believes in general; it asks him to come forward and tell what he knows in particular. If he has any thing to contribute to the sum of human knowledge and experience, it will be received by that body of scientific men to whose work it is germane, and judged by its merits. There is no reason why a medical journal should refuse to receive a communication on any branch of medical science from a physician of any sect, provided it stand the test of scientific work. Between those who believe in the creation of the world by cataclysms, and those who believe in orderly evolution, there is as wide a difference as between sugar-pills and castor-oil. Yet I never heard of the one body of scientific men refusing to sit down and compare views of creation with the other. We have been asked, what would be thought of a scientific engineer consulting with a Keely-motor man? It will be time to answer this

question, when we hear of any body of scientific engineers committing the absurd act of passing a law, that no member of said body shall, under pains and penalties, consult with a believer in the Keely-motor. As far as is known, no scientific body places prohibitory rules upon scientific men in matters of ethics. The pursuit of truth, justice, and humanity are alone enjoined, and each individual is to determine whither that pursuit shall lead him. The Medical Society of the State of New York, lays claim to nearly the whole field of medical thought and progress in the State, and the largest degree of personal liberty that is consistent with conduct becoming a physician and a gentleman should be accorded to its members. We may not insist that others should think as we do, but should concede to them the right to independent thought and action in disputed ethical matters. Hence the reënactment of the old code might not be proper, even if a majority of physicians of the State were in favor of it, for experience shows that in questions like the one now considered, majorities seldom make their decisions operative upon the minority, unless the latter is insignificant in number and character.

It may be suggested, also, that if the old code

is rejected by many, it is because it was never voluntarily subscribed to by them. A young man decides to study medicine. He is graduated at one of our best medical schools, and settles in any county of our State. His attention is called to a law\* of the State, requiring him to join a county medical society. Doing this, he finds himself amenable to a code, which, he claims, infringes upon his personal rights and privileges. Is it proper for a medical society, obtaining its members by a compulsory law, to subject them to a set of specific rules for conduct and respectability? Such rules have no parallel in any other department of professional activity. If church creeds are adduced, we answer, that they are not obligatory unless voluntarily assumed. The analogy

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\* *General Regulations concerning the Practice of Physic and Surgery in the State. Passed in 1827.*

[From the Revised Statutes, part 1, chap. 14, title 7.]

§ 1. The president of every county medical society shall give notice in writing to every physician and surgeon not already admitted into such society, within the county in which the society of which he is president is situated, requiring such physician or surgeon, within sixty days after the service of such notice, to apply for and receive a certificate of admission, as a member of such society.

§ 2. The service of every such notice shall be made personally, on the physician or surgeon, to whom it shall be directed; and if such physician or surgeon shall not, within the time specified in the notice, or within such further time as may be allowed by the president, under the regulations of the society, apply for a certificate of membership in such society, his license shall be deemed forfeited, and he shall be subject thereafter to all the provisions and penalties of the laws of this State, in relation to unlicensed physicians, until upon a special application he shall be admitted a member of the medical society, in the county in which he shall reside.

would only hold, if we were obliged by law to join a particular church and adopt a particular creed.

If asked whether I would do away with a State code, I would answer, yes. We must trust to the unwritten code of gentlemen, or to a simple declaration, and especially to voluntary organizations, to uphold the moral tone of the profession. I believe these measures to be better than a set of arbitrary rules, which suggest the inference that the body of the profession cannot be trusted without them. As it is urged in some quarters, that there is an element in the profession which needs the sentiment of the old code, and a portion of its information as to consultations, I would have these embodied in an ethical tract, or in one or more lectures in the regular college course. This should supplant a code with penalties. Though we have had the latter for sixty years, there has been no uniform conduct established thereby. Ethics must vary with time and place. In certain parts of the country, the doctor vies with the grocer in the size of his sign, his advertisement appears in the country newspaper, and his office, by the right of proprietorship or by friendship, is at the drug-store. He prescribes nostrums for his patients, and keeps up an un-

ceasing warfare with his irregular brethren. This latter mode of action sometimes constitutes his claim to be "regular." These conditions will not be changed by the maintenance of this hostility, but rather by the inculcation of the truth, "that there is no difference between physicians but such as results from their" inherent character, "personal talents, medical acquirements, or their experience."

If the code be abrogated, or its restrictive features stricken out, will the profession rapidly or gradually lapse into a state of barbarism, or as one anxious for its reputation intimates, lawless individuality? Will personal responsibility for conduct be no longer felt? Will gentlemanly instincts be obliterated? Will trade principles and low practices prevail? If it is only a code which prevents these dire results, then indeed we may be unfit associates for some outside of our ranks, for there are sectarian physicians who, without a law in these respects, are a law unto themselves. When I ask my professional friends to show me a man whom they would not trust without a code, they point to one whom they are forced to admit that they would not trust with a code. It is much better that the real status of such men should be known, and if they are only held in a quasi respecta-

bility by a code, they should be permitted to drop to the level of quacks and impostors, where they properly belong. It will be a healthy process for the body of the profession. The atmosphere will be clearer and lighter for it, and the truly respectable physicians will rise to a higher plane than that they now occupy. Individual responsibility for conduct will be felt with greater force. With the abrogation of the letter of detailed codes, there will be the substitution of the spirit of the highest codes, as embodied in the golden-rule and the conversation and action of gentlemen.



## THE FUTILITY OF A FORMAL CODE OF ETHICS.

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The necessity of a Code of Ethics for the medical profession of this country, implies :—

First.—That its social status is such that an effort must be made to formulate in language what constitutes a “gentleman.” This is an effort which no other liberally educated or scientific body has made. Such a status, if not acquired by antecedents or education, can no more be formulated in language and applied by the novice, than can all the accessories of wealth applied to the ignoramus supply that, which to a great extent must be inherent, or be imbibed in the first teaching of parental tenderness.

Secondly.—The necessity of a code implies that independence of thought and action cannot be tolerated ; that no individual member of the profession, no matter what may be the peculiar circumstances under which he may be placed, shall exercise an inherent right to act as humanity and his judgment dictate ; but he must sink



his individuality and submit to the impersonal dictates of a trades-union which absorbs both the personality and the conscience.

The objects to be attained by measures so restrictive, are the attainment of a high character in the profession, and the suppression of irregulars and quacks. Has fifty years' experience of a code attained these results? The answer calls for an historical retrospect: That the profession has made substantial advancement, not only in the average intellectual attainments of its members, but also in their methods of thought and work, is most cheerfully conceded. Not only has the plane of medical education been materially elevated, but the preliminary character and culture of the men who seek admission to its portals have been markedly improved. But are these conditions, even by the most forced hypothesis, to be attributed to the teachings as to behavior or to the trades-union restrictions of the Medical Code of Ethics? Never before has there been displayed such activity in all the avenues of thought and research. Whole branches of physical science, which fifty years since were but in an embryonic state, have been developed and perfected; with rich and boundless fields for research and speculation, medical minds have eagerly engaged in inves-

tigations, have freely appropriated the aids which successful study in other fields have rendered, and medicine rescued from speculation and hypothesis stands on a more exact basis than ever before ; on the other hand, as society grows older, intellectual culture more acute, and competition more active, a higher state of preliminary attainment in knowledge is demanded, a more refined and courteous intercourse required from those who seek either the emoluments or honors of the profession. All these advances are but the natural outgrowth of a more active, refined, and intellectual civilization. If this condition is taking place not only in countries where codes of medical ethics are unknown, but even here, where its workings have been undisputed for so many years, why shall the profession be still belittled by formulas of deportment, when there is the broader, unwritten, instructive, self-convicting expression, "conduct unworthy of a gentleman" ? This is the comprehensive expression to which all these formulas of the code can be brought. This is the only code which any of the other liberal professions demand. This relieves the medical man from his thralldom, places him upon his integrity and self-respect, and leaves him to follow without restrictions the humanitarian impulses of his

calling. Who rears best his children that they may grapple with the moral problems of life; the parent,—who inculcates the broad principles of truth and justice, of truth to ourselves as well as to others,—or he, who, by sophistical reasoning or implied innuendo, causes the plastic mind to suspect wrong and falsity in every act?

Is it not conceded that in schools where a system of espionage prevails, the temptation to do wrong and the performance of ungentlemanly acts are far more common than in schools where the sense of personal honor is instilled and personal responsibility encouraged? Medical men, also, will reach a higher ethical plane, when the broad principle of gentlemanly behavior replaces expressions, which even at their best, give an imperfect idea of what constitutes this high prerogative.

Thus far, the necessity of an ethical code to control the actions of medical men, has been considered with reference to their relations to each other and those entrusted to their professional care. There still remains to be considered the necessity of a code to govern their action toward those who may be termed "irregular." This may be viewed both from its utilitarian and humanitarian aspect. As the

great majority of those termed irregular are comprised under the appellation of homœopathists, they alone are alluded to in the discussion. When the absurdities of this sect first came to the attention of the public and the profession, no theories of therapeutics, could be more at variance, than were those of the new sect, with that which had ever been accepted by the profession. The use of drugs in infinitesimal proportions, was so revolting to common-sense, that the profession unanimously denounced the methods of homeopathy and placed it under the ban of non-professional intercourse and recognition; so vigorously and acrimoniously was this course pursued that a sympathetic reaction took place in public sentiment, and in spite of anathema, denunciation, and the ban of non-professional recognition, homeopathy has grown steadily in numbers, strength, and professional attainment, until to-day its practitioners constitute in every city, village, and hamlet a large percentage of the medical influence of the land. They are legally recognized in a large number of the States; they have their colleges, societies, and medical organizations equipped and disciplined for regular work; they have the confidence and patronage of many of the most intelligent and wealthy

in every community. Their absurd doctrine of infinitesimals, is almost wholly abandoned, and their peculiar dogma is now alone *similia similibus* in the application of medicine to disease.

Wherein lies the cause of this wonderful success? No dispassionate, educated man, be he physician or layman, would claim that it resided in their potential attenuations,—now abandoned by themselves! And yet, under these potential attenuations, they exhibited remarkable data of recovery from disease. The answer, in my judgment, must be sought in far different causes than their discarded infinitesimals. At the time of their appearance the school of heroic medicine held almost undisputed sway throughout the medical world. Disease was a foreign element, which, at all extremities, must be driven or eliminated from the system, and the whole armentarium of heroic measures were promptly called into requisition : Bleeding, “coup sur coup,” mercurials to salivation, catharsis and emesis to vital toleration, were the special and daily means employed by every physician ; and when the patient survived these violent assaults his cure was attributed to the prompt and vigorous measures employed. If a case

of apoplexy or paralysis presented, the lancet must be used promptly and vigorously ; if pneumonia, the lancet, calomel and vesication ; if fever could be seen in its early stage, still bleeding, calomel and catharsis. Certainly our present system of therapeutics is as much at variance with this, as is homœopathy itself. Under homœopathic care all these diseases subsided without any of the heroic measures. The community was not slow to recognize the result, and a powerful factor was thus presented for the rapid growth of the absurd dogma. It had its origin, as do all false systems, in some inherent and now recognized defect of regular medicine itself.

The regular physician who should follow his calling to-day, as did his predecessors when homœopathy was introduced, would be regarded quite as irregular as were these disciples of Hahnemann. It is not the purpose of this paper to argue the relative merits of either mode of practice, but simply to show the historic fact that, in spite of its absurd pretensions, homœopathy has made strides which, reasoning from the merit of its claims, would seem incomprehensible ; but which, if studied with reference to the two systems in the hyper-medication of the one and the real non-medication of the



other, so far as drugs are concerned, resulted in advancing the latter, for the homœopathic drugs at least had the “vis medicatrix naturæ” with them. But even more than this the proscriptive methods adopted by the regular profession were intended to advance it; they did for them at the beginning just what is still doing to-day,—allowed sympathy to react in their favor; allowed them to expatiate at the bedside on their exclusive dogmas without fear of exposure; allowed them, under the pretence of a particular system, to administer remedies which are recognized as suitable by regular physicians; in a word, have allowed a pretended system to grow and extend, which, in reality, has no real foundation, and which, had it been fairly and frankly met at the only place where its sophistry could be exposed—the bedside of the patient,—would to-day have been among the forgotten “isms.” The homœopath, pure and unadulterated, is not asking for any change in ethical methods toward their body. He is perfectly satisfied with the status which has existed and which has produced such golden results. His profession in the light of a trade is far more lucrative, and does not call for a tithe either of the study or scientific preparation which the enlightened physician feels constrained to undergo.

Neither denunciation nor scorn ever settled a scientific opinion or convinced what, on the whole, is ever a fair and reasoning public. Medicine never made any real progress, so long as its teachers were content to sit in their studies and elaborate theories. It was only when the pains and methods of clinical research, joined to the laboratory work, mutually explained each other, that positive notions were obtained. So, too, with error in systems of medicine ; you may fulminate anathemas, you may refuse recognition, you may satirize the methods, but you will see the error only root itself more deeply. All experience in all systems of error has shown this, and were emphasis needed, the course of the profession toward homœopathy for the past fifty years, taken in connection with its marvellous growth, and that growth the more marked where the professional proscription was the most decided, would show the fallacy of such a course.

Looking, then, at the fact, and regarding it from a mere utilitarian stand-point, as a method of repressing error, the course of the profession has been profitless, deeply rooting prejudice in the minds of its members, and correspondingly in the general public who may sympathize with the fallacious dogma.



There is still another stand-point from which the subject must be studied. If there is in the work of a physician something higher than a mere profession or calling,—something which should liken him in character to the man “who went about doing good”;—something which calls not for human approval or pecuniary gain,—then should he rise to the highest conception of his ideal, and putting aside prejudice and passion, follow out his calling to its legitimate aspirations. Can he do so, if hampered by a restriction which permits no exercise of individual judgment and turns a cold and silent ear to all appeals of humanity, unless presented in a formulated routine? Dr. Flint, Sr., whose years of faithful work have endeared him to the profession, and to whose judgment all yield a respectful ear, and who, in his late exposition of the code of the American Medical Association, has probably presented its claims as earnestly and favorably as the nature of the subject would permit—concedes, in this respect, the weakness of the code he upholds, and virtually admits the right of independence of thought and action. He says: “It is a gratuitous reflection on the National Code of Ethics to imply that it interdicts professional services under any circumstances in which they are required by humanity.” Either the

National Code of Ethics must be taken at its strict expression, or else it has no binding force. If the right of individual construction is permitted, under any circumstances, the concession covers all that the advocates of the new code claim. If it recognizes the necessity of individual judgment and, without reciting the very many conditions where such individuality would be the exponent of the common dictates of humanity, recognizes the fact that such conditions may and do occur, the elaborate National Code becomes an empty verbosity, subject to the private construction of every individual member of the profession.

It is a "monstrous injustice" to intimate that a physician who claims this right of individual opinion thereby sympathizes with or favors the tenets of an exclusive dogma. The fact of his advice being sought under such circumstances, is a concession of inability on the one hand, and recognized superiority on the the other. The more frequent such an exposition can be made in the sick-room, the sooner will honest practitioners of Homœopathy acknowledge their error, and their faithful adherents the fatuity of their belief. The shadow of mysticism will vanish when plain, clear facts—not denunciation and non-intercourse—are allowed free access to the sick-chamber.

The pharisaical spirit has in this respect long governed the action of the medical profession. Let its members rather in pursuit of their humane calling, go wherever and whenever legitimately sought, and in giving intelligent and devoted aid trust their professional status rather to the result of their work than to the artificial and adventitious cloak, "I am holier than thou!"

While the real question at issue, regards the autonomy of the individual, subordinate only to what constitutes gentlemanly deportment—on the one hand—or whether he submits himself to a formulated ethical code, the effect of which on one who has not true gentlemanly feeling is rather to study its loop-holes than gentlemanly instincts, this has been ignored in most of the discussion so far published. The "bête noire" of treason to the American Medical Association, of exclusion from its meetings and ostracism by the members, are constantly presented as factors to influence the judgment of the profession. The veriest tyro need not be told that these are no arguments, and in a question of principle and not of policy should not command a moment's serious attention. Even were the American Medical Association, from the character of its organization or the nature of its

attendance, entitled to speak authoritatively it would be a great strain of prerogative to act the part of a conscience mentor in conditions the peculiarities of which it could not anticipate. It has not, however, either in constitution or representation any such prerogative—for it is a purely voluntary organization without any chartered privileges and with no authority to enforce its own edicts—a peripatetic body with an attendance both in numbers and *personnel*, varying according to locality and the accidental attractions which the locality may present—its representation is of the vaguest character, for, once a delegate, one is ever after a permanent member, provided the annual dues are paid. To those who are conversant with the loose manner these delegateships are tendered—dependent solely upon whether the person selected desires the recreation of the trip—they carry but little weight or importance with the home organizations, and in no manner represent the professional or intellectual force of the locality. They possess absolutely no delegated authority to do any act or thing which shall effect the status or relations of the home societies toward each other or their individual members. It is, then, but sheer presumption for a body, so variably and loosely organized, to dictate to the whole profession of

this country an ethical code which smothers individuality and makes the physician but portion of a conglomerate trades-union. It is not the purpose of this paper to denounce the American Medical Association ; taken in connection with our federal organization, and the great extent of our territory, it is probably as compactly formed as the nature of circumstances will permit. Its benefits lie not in the domain of medical ethics, but in promoting social culture and in the comparison and discussion of those topics which the activity of the medical world is constantly forcing upon the profession. This forms a field sufficiently vast to gratify the largest ambition. Were it limited to this, the heartiest good wishes of every member of the profession would go forth spontaneously for its welfare and success ; but when it arrogates, through star-chamber edicts,—without even the form of discussion in open association,—to regulate the personal acts of each individual of the profession, no matter what may be his surroundings, or under what conditions he may be placed, it is a presumption to which a proper manliness revolts and which,—so long as the Association yields a passive obedience to the edicts of the secret conclave—will lessen the influence of the body both in its social and scientific workings.

But why consider further this assumption of the American Medical Association, which has neither legal nor delegated rights to speak for the profession of the country? The attempt which was made at its late session, to stifle discussion and to stamp out all allusion to a subject, which so largely occupies the attention of the profession throughout the land will be treated with derision. No conclave or body which attempts, by arbitrary acts, to enforce obedience and summarily stifle discussion where the reason is not convinced, can by its rulings command respect. It is the entering wedge which will eventually cleave in twain its own organization,—for even among medical men who have so long quietly submitted to be hampered by artificial restrictions, the irresistible demand for free thought, free action, with no restriction but the high and noble aspirations of what pertains to physicians and gentlemen, will certainly arise.

There can be but one remedy in future action upon the subject of medical ethics ; it is as futile to stifle discussion as to stop the force of a swelling current. That formulated codes will be abolished, is as certain as that freedom of thought and action are the palladium of our institutions. Saying this much is not commun-



ism, nor agrarianism. There are legally constituted medical organizations in most of the States, which can at all times determine in what constitutes gentlemanly conduct, and who will jealously uphold professional dignity. To them can be confided the simple ethical principles I have upheld. Let the American Medical Association and voluntary organizations of a similar character, confine their purposes and work to the cultivation of social relations and the limitless field of professional research. In these aims there is enough to gratify the largest ambition, and, in their sincere pursuit, shall we sooner value vexed questions in our science, and command the respect and confidence of the general public.



# CODES OF MEDICAL ETHICS.

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Ethical questions relate to the most delicate relations of life; they have to do with the hidden springs of action which prompt to any given course; they involve the instincts and impulses, as well as the reason and judgment of the individual; they constitute a domain in which every man is his own rightful sovereign, and an uninvited intrusion into which by others he has the right to regard and resent as an impertinence.

Every principle and instinct of manhood leads an individual to assert his right of independent judgment in matters that pertain to his feelings and conduct, and to admit of no restrictions by his fellows upon his practices, so long as the comfort and well-being of others is not trespassed upon.

The paternal government to which children are subjected is based on the truth that children are incapable of judging for themselves, and must be guided and corrected until they arrive

at years of discretion. But even with children there may be such a thing as too much government. It certainly is the part of wisdom for a parent to realize when his parental solicitude may be relaxed, and to adapt himself to the changed circumstances. A parent may formulate a set of rules to which he may require the child to conform in his outward conduct as long as the child is dependent on him for support. An employer may establish similar rules, conformity to which he may require as a condition of remaining in his employment. In both instances such conformity is a mark of dependence, or a badge of servitude, and endured only by stress of necessity. A freeman rejoices in the right to regulate his own conduct, his manners, and morals, subject only to those limitations which the equal rights of other creatures impose upon him.

After this statement of general truths as to rules of ethics, it becomes of interest to inquire whether there is any thing in the peculiarities of membership in the medical profession which should make matters of medical ethics an exception to those principles which apply to ethics in general.

Any remarks upon the nobility of the profession of medicine would be trite ; it claims for

itself, and the willing tribute of others accords to it, the preëminence among the callings that men give themselves to, for the devotion to humanity, the high courage in the face of danger, the self-sacrifice for the relief of others, the public spirit, the liberality of views, and the general culture which the duties, the studies, and the influences of the profession tend to develop, and which its members, as a class, display.

A physician is not a member of a guild or corporation, the rules of which he must comply with in order to retain his membership therein, and to enjoy its benefits, but a member of a liberal profession, the rules of which are the unwritten law of humanity, and the special requirements of which must vary much according to the peculiarities of his environment. The approval of his own conscience, the respect and good-will of his colleagues, and the confidence of the people will always be the marks that will indicate the perfection with which he complies with the ethics of his profession,—while their loss is the worst of penalties that can follow his dereliction.

Of all classes of men, physicians are certainly least in the condition of children that need paternal watchguard and rules of conduct; and

yet the singular spectacle is witnessed in the United States of America, at the present time, of a very large proportion of its physicians insisting upon the necessity of such provisions, either for their own guidance, or as a standard by which they may try the conduct of others. To one who has a high opinion of the dignity of his own manhood, as well as of the deference due his professional position, such a spectacle is a pitiful one, that might well excite his antipathy to the agents that have made it possible.

Even were it true that there were such difficult elements or complexities either in the relations of physicians to the public, or to each other, that it would be improbable that the average educated mind would be capable of deciding for himself his duty in the various junctures that might arise, there is no authority from whom the needed ethical laws could emanate. The physician is a freeman ; he has ceased to recognize paternal interference with his judgment ; he wears the livery of no employer ; he acknowledges the restrictions of no trades-union. If, however, as an individual, he chooses to abdicate his dignity and put himself under a yoke, he has the right to do it, but he has no right to require that others shall follow his example.

Nevertheless, in defiance of this principle, certain associations of medical men in this country, have assumed the right to prescribe a fixed code of rules of conduct, not alone as the laws for their own guidance, but also as the standard by which they presume to fix the right to professional fellowship of all physicians.

However praiseworthy may be the desire to foster an elevated ideal of professional conduct among physicians, in which these codes have undoubtedly had their origin, the attempt to arbitrarily force them upon the acceptance of individuals, is a trespass upon individual rights that can be excused only either on the plea of great necessity, or on the promise of extreme benefit to be derived from such a course.

At the first annual meeting of the American Medical Association held in Baltimore in May, 1848, the president, in his opening address, made the statement, that the profession of medicine had become corrupt and degenerate, to the forfeiture of its social position, and of the homage which it had formerly spontaneously and universally received. That the truth of this averment was everywhere recognized and proclaimed, and that as an association they were imperatively instructed to purify its taints and abuses, and restore it to its former elevation and

dignity, and that they were to seek a reform in medicine through a proper regard to its future glory and usefulness.

To remedy this state of things, to purify and elevate the profession of medicine in the United States, was to be the vocation of the association, and one of the earliest steps taken by it was the formulation and adoption of a code of ethics which, in the words of Austin Flint, should be indispensable for the sake of reference whenever differences of opinion should arise, an index to the proper course to those whose moral perceptions may be defective, and a safeguard against the bias of personal interest.—(*N. Y. Medical Journal*, March 17, 1883, p. 286.)

No one can question the right, however much they may question the taste and dignity of the proceeding, of any association establishing specific rules of conduct for its members, if it chooses, and requiring conformity to these rules as a requisite to membership. So, in this case, this association had the right to establish its code, and to require that all its members, and all organizations which would be affiliated with it, should accept this code.

In addition to this, however, the adherents of this association, during the years that have passed since then, have claimed that this code



was binding as well upon all members of the medical profession, and have proclaimed as unworthy of professional recognition those who refused allegiance to it.

Such claims have derived special force from the fact that this code contains sentiments that are marked by a spirit of propriety and dignity, and that it manifests an exalted ideal of the mission of the physician. Well might it be thus marked; for it is chiefly a copy of a code of ethics prepared, at the close of the last century, by a learned and pious physician of England, Dr. Percival, of Manchester, for the direction of his own son, who was about to engage in the practice of medicine. In the dedication, the father states that in its composition his thoughts were directed to his son "with the tenderest impulse of paternal love," and the body of rules which he framed form a proper legacy from a father to a son, while they reflect the greatest honor on the mind and heart of the author which they mirror.

It will not fail to suggest itself, however, that what may have been a very fitting and touching legacy from a father to his son, may become quite another thing when set up as the ultimatum of ethical law for the profession of a continent, and that ideas and directions, however



noble the thought that animated them, which were timely in the days when Pitcairn was still carrying the "gold-headed cane," and when the voice of Dr. Brocklesby's barber, exclaiming, "Make way for Dr. Brocklesby's wig," had not yet died away from High Change, may demand to be differently stated in the latter part of the nineteenth century.

Waiving, for the present, the question of the right of any association of men to assume to dictate laws of conduct for a profession, it is to be acknowledged that it was done, and that other local associations, State, county, and town, accepted the code provided without question, until an organization was perfected that extended over the whole country, bound together by this code as its common bond. For a whole generation the great mass of the educated physicians of the country have been professedly dominated by it, and not until within the past three years has its rule been called in question.

During all these years, nevertheless, its enforcement, whenever attempted, has been a trespass on individual rights. The conditions which reigned in the medical profession in this country a generation ago, may or may not have been of a character to create the necessity of attempting its enactment; it is immaterial now to inquire

into that. The living question to-day is whether the benefits derived from it in the past, and certain to be conferred by it in the future, are of that extreme character which alone could pardon an attempt to continue its existence.

It is claimed,<sup>1</sup> that the result of the promulgation of this code in the special manner described has been to cause medical men of the present day to feel it a duty to sustain the younger members of the profession, to treat them with courtesy and kindness, to save them from their errors, and to encourage them in all their good work ; that it has put the seal of condemnation on all "isms," and developed an *esprit de corps* that has enlarged the boundaries of our science, and greatly increased the usefulness and social standing of the profession.

It may be claimed with some plausibility, on the other hand, that the period has been one in which there has been a general improvement in the material, mental, and moral tone of the country ; that it has been a time of wonderful change and progress in every department of life ; and that the medical profession has simply responded to the stimulus of its surroundings, the causes of whatever changes may really have

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<sup>1</sup> The President's address before the American Medical Association, 1883, by John L. Atlee, M.D., LL.D.

taken place in its tone and bearing being extrinsic quite as much as intrinsic. It may be said—and much might be found to corroborate it—that it has not even kept pace with other learned callings in the advances which these years have produced, although the latter have not enjoyed the “invaluable blessings” (Atlee) of distinct codes of ethics. It may be said that equal, even greater, relative progress in elevating the standard of attainments among medical men, of advancing the science of medicine, and of securing for its practitioners the respect due them, has taken place during the same period of time in other countries where the safeguard and help of a formal ethical code, such as that of the American Medical Association, has not been provided.

There is room, then, for differences of opinion as to the real causes that have been most active in making the medical profession of this country what it is to-day.

As for myself, after a careful consideration of the *pros* and *cons* as to the benefits which the profession of the United States have thus far derived from the Code of Ethics of the American Medical Association, I am not able to see that they have been or are likely to be of such an extreme character as to reconcile me to ac-

cept it as the sole and authoritative guide by which my professional conduct must be fixed, nor to cause me to recognize in any man, or set of men, the right to bring me to bar for judgment.

Moreover, my own observation of medical men and manners during the twenty-one years that have passed since, as a medical student, I first felt myself identified with the medical profession, has caused me to feel, more and more strongly as the years have passed by, that the attitude of medical men in this country in matters of ethics, toward each other and toward the community, was radically wrong, and that it was working injury to the best interests of the profession as a whole.

The first injury, that I have believed discernible as flowing from the attempt to define in detail the methods by which the conduct of physicians in the various relations of life should be performed, is that it has tended to foster the creation of, and to give prominence to, a class of men who think much of the strict letter of the code, often to the forgetting of its spirit—medical Pharisees, who tithe the anise and cumin of medical etiquette, who make broad their ethical phylacteries, and thank God that they are not as other men are, but who nevertheless feel at

liberty to coolly ride rough-shod over the rights of others when such rights are not protected by any distinct provision of the code.

The second count in my indictment against the code is, that it has fostered and maintained a spirit of censoriousness in the profession. It tends to make every man a spy upon his neighbor, and has made persecutions of the most petty nature possible. It has placed in the hands of certain men a weapon to use against those that are weaker. It has created a multitude of star-chambers all over the land, in which men have assumed the right to sit in judgment upon and to exercise discipline over their peers as to the motives and methods of their professional conduct. The kinds and doses of medicines he uses, the theories of cure that he may indulge, his methods of commanding the confidence of his patients, the amounts he may charge for his services, the persons to whom he may give advice,—these and many like things physicians have claimed to be empowered to regulate for each other under the provisions of the code.

A third imputation upon the practical workings of the code is, that most of its provisions have, in general, been ignored, while attention has chiefly been centred upon a single part of

its provisions, and that the least important, which has been so interpreted and enforced as to cause public attention to be continually attracted to a single form of medical error, in such a way as to create for it sympathy and to promote its growth in the esteem of the public.

A fourth evil has existed in the great unevenness which has prevailed in the manner in which infractions of the code have been subjected to discipline. It has often appeared that its provisions could be observed or disregarded at will by men who were prominent and influential, while the obscure and weak alone were expected to implicitly comply with it. Men who have been notorious for their infractions both of its spirit and letter have repeatedly received the honors of the association which created and maintained it; and in every city there are many who violate it without any attempt being made to subject them to discipline. Flagrant violations by powerful medical organizations have for years been the subject of general comment, but never of discipline.

It would be possible to still further elaborate statements of harmful tendencies, which thus far have accompanied the domination of this code of ethics in this country, but this must suffice. In conclusion, I have but to say that if my



premises have been correct, there is but one logical outcome to my reasoning, viz.: the rejection of the present code of the American Medical Association, or of any like set of definite ethical rules, by whomsoever framed, as of any authority to control my professional acts.

I trust that even the most enthusiastic supporter of the code that I reject, will acknowledge that my conclusion is not necessarily dictated by a mercenary spirit, nor yet the result of a low standard of professional honor and dignity. I may, and do, welcome this code as a treatise on the moral aspects of medical life, as of value for reference and counsel, but for my decision as to what my action in any given case may be, I hold myself responsible to my own conscience alone.



## A PLEA FOR TOLERATION.

BY THOMAS HUN, M.D.,

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“A regular medical education furnishes the only presumptive evidence of professional abilities and acquirements, and ought to be the only acknowledged right of an individual to the exercise and honors of his profession.” The above extract from the code of ethics of the American Medical Association is a fair statement of the principle which should guide the members of our profession in regulating their professional intercourse. Unfortunately, the framers of the code have added a clause of exclusion which seriously limits and perverts this principle. They declare: “No one can be considered a fit associate in consultation, whose practice is based on an exclusive dogma, to the rejection of the accumulated experience of the profession and of the aids furnished by anatomy, physiology, pathology, and organic chemistry.”

Doctor Austin Flint, Sr., who seems to have studied carefully the whole question, and who has published in the *New York Medical Journal*

an admirable commentary on the code of medical ethics, says, in the April number, 1883, page 372 : "The objectionable point of the code is that which makes 'a practice based on an exclusive dogma' the ground of a refusal to meet practitioners in consultation. This is not a valid objection. Any physician has a right either to originate or adopt an exclusive dogma, however irrational or absurd it may be."

On page 373 : "Opinions held by members of the regular profession, however at variance with those generally entertained, and however absurd, may fairly give rise to criticism and ridicule, but they cannot be made occasions for professional discipline."

It is pleasant to find one's views coinciding with those of one who has carefully considered the whole subject, and who has brought to its study distinguished ability and high personal and professional character. When we remember that Doctor Flint is a prominent leader of a party in the profession, to most of whom these liberal and just views must be extremely distasteful, we cannot but admire his candor and fairness.

The views he has presented are eminently sound, and commend themselves to the judgment of those who understand the conditions which underlie all scientific progress, to wit : the

largest toleration and freedom of discussion. Under their influence new truths are brought out and examined, and errors eliminated, for error is most dangerous when driven into obscurity. No man or body of men can lay claim to absolute truth ; the wisest are no more than seekers after truth.

These considerations, which are applicable to all scientific investigations, are peculiarly so to the science and art of medicine. Owing to the difficulties which surround the investigation of its facts, and to the complexity of the problems presented for solution, medicine is, more than other sciences, marked by uncertainties and much divergence of opinion. Hence its aspect is constantly changing ; and this change is a necessary condition of its growth, as in the living organism, growth and development require incessant change of matter and change of form. There can be in medicine no heresy, because there is no orthodoxy.

By the labors of the past a certain system of facts and generalizations and methods of practice have been brought together, and the study and acquisition of these constitute a medical education. This entitles the possessor to admission into the medical body, and after that it remains for him, with entire liberty of

choice, to adopt such a system of doctrine and practice as commend themselves to his sense and judgment. If he falls into error, as in some degree all do, he must be set right by experience and discussion, and not be cast out as a heretic by men fallible like himself.

Starting, then, from this principle of toleration, the soundness and wisdom of which will receive confirmation as we proceed, I go on to the discussion of the question which is now agitating the medical profession.

The National Medical Association declares a medical education the essential qualification for admission to consultation, excluding, however, all who adopt an exclusive dogma, meaning thereby the homœopathists.

The New York State Medical Society has amended this rule by allowing consultations with legal practitioners.

To become a legal practitioner, the candidate must have passed through certain courses of study and given evidences of having received a medical education.

But a certain class of legal practitioners is composed of homœopathists, and the effect of the amendment of the code is to allow consultation with homœopathists who have received a medical education.

The old code prohibits these consultations. The question to be discussed is : Which course is the more wise ?

If the principle I have, in accordance with the views of Dr. Flint, endeavored to establish in the beginning of this paper, namely, that those who have received a medical education are entitled to recognition by the profession, irrespective of their doctrines and systems, is sound, then this exclusion of the educated homœopaths because their practice is based on an exclusive dogma, is illogical. Toleration, if it means any thing, means toleration of error, and I do not see how to draw the line which shall limit this principle. To me homœopathy is so false in its statements and assertions, so unsound in its reasoning, and extravagantly absurd in the therapeutic agencies on which it relies, as to put a great strain on my power of toleration ; yet even in an extreme case like this, it is unwise to violate, by any act of exclusion, this great principle lying at the foundation of scientific discussion and of search after truth.

But there is, according to Dr. Flint, still a disqualifying cause which should exclude homœopaths from consultations, and this is the " assumption of a name and organization distinct from and opposed to the regular profession."

There is undoubtedly force in this objection, but if we look back at the history of the rise and growth of homœopathy in this country, the objection will be weakened, if not invalidated. Surely the doctor is old enough to remember the persistent efforts made in the beginning by the homœopathists, when as yet they had no organization, to be admitted into our county medical societies, or in the case of members of the societies who adopted homœopathy, to resist expulsion. The numerous suits unsuccessfully brought before the courts to compel the societies to admit or retain them, sufficiently attest that if they now have a distinct organization, the fault is not on their side. We thrust them out-of-doors, and now it comes with a bad grace from us to give as a reason for refusing fellowship with them, that they are not in our house.

Here the regular profession lost its great opportunity. If, instead of rejecting those among the applicants who had received a medical education, we had taken them into our ranks, notwithstanding their adoption of an exclusive dogma and unsound therapeutic doctrines, we should have avoided for ourselves much embarrassment and mortification, and the career of homœopathy in this country would have been very different. We should then have laid down



the true and wise rule of admitting all who had received a medical education, leaving each one to practise medicine according to his best judgment and ability, without undertaking to trammel him with conditions of orthodoxy. By such treatment the ignorant charlatans would have been sifted out and the educated portion would have come under the influence of the regular profession. Unsupported by any appearance of persecution, compelled by their associations to explain and defend their views of disease and modes of treatment, deceptions would have been unmasked, errors would have been refuted, and before this time homœopathy, following the course of so many systems which have preceded it, would have existed only in history.

It is plain that this objection, now made by Dr. Flint to their recognition, was not at that time a valid reason for their exclusion, for it was created by that very exclusion. They were excluded on the charge of "basing their practice on an exclusive dogma," which we now, in accordance with Dr. Flint, maintain to be not valid, and consequently their exclusion was a blunder of the regular profession. This blunder drove them into a separate organization, and this now constitutes a great objection to their recognition, and, as I understand Dr. Flint,



the only objection, provided they have received a medical education.

Shall we, then, by persisting in the blunder which has driven them into a separate organization, which is itself, as Dr. Flint has pointed out, the only valid objection to their recognition, perpetuate this schism, or shall we, by retracing our false step, try to heal it? Let us glance at history.

About forty years ago, homœopathy was introduced into this country, mostly by ignorant adventurers from abroad. The grotesque absurdity of its doctrines, the ridiculous insufficiency of its therapeutic agents, and the personal insignificance of its practitioners, all concurred in procuring for it the ridicule and contempt of the medical profession, which has ever since refused all association with it.

But its reception by the general public was far different. Contrary to expectation, this new system met with extended acceptance, and was patronized not by the ignorant only or chiefly, but by men and women of high social standing, of intelligence and sound practical judgment. This strange abandonment of the medical profession by such people for such a system, practised by such men, has, instead of ceasing as was expected, gone on increasing, and up to

this time the movement shows no signs of arrest. The homœopathic practice now numbers among its patrons, judges, eminent lawyers, shrewd merchants, presidents and professors of colleges, besides many from less prominent conditions of life. Every great city has its homœopathic practitioners, and every village has its representative of the system. It is not pleasant to record facts like these, but they are very real facts, and we must have them clearly in mind, if we would seek for a remedy for this most absurd condition of things.

Along with this successful progress of homœopathy in public patronage a great change has taken place in the body of its practitioners. Whether from conviction of the truth and value of this system, or from less worthy motives, educated men, graduates of the best medical schools, and from medical schools established by themselves, have joined their ranks, which now present a very different appearance from that of this small body of ignorant, ill-bred practitioners of forty years ago. However low may be our estimate of the system and of those who practise it, we cannot look with indifference on a movement which not only interferes with our material interests, but also places us in an undignified and mortifying antagonism with op-

ponents whose system we look upon as unworthy of serious refutation.

All who have the interest of the profession at heart are pained by this spectacle and embarrassed in their daily practice by the questions to which it gives rise. We are all united in the desire that this state of things should be made to cease, but differ as to the mode in which the end may best be accomplished. We have tried the system of exclusion rigidly and faithfully, and we have the result before us : homœopathy, so far from being extirpated, has grown and prospered. In the beginning, the method of exclusion commended itself to the profession as wise and justifiable, because of the extravagance of the system and the insignificance of its practitioners. It was supposed to be a folly that would soon go out of fashion, and the profession thought no more of refuting it than the geographers and anthropologists of the day, when Gullivers travels appeared, thought of proving that there was no such land as Lilliput, and no such people as the Lilliputians. But owing to causes into which it is not my purpose here to inquire, but to which I will at least say the errors and defects of the regular practice of that day, largely contributed, this expectation has been disappointed. The patrons of the system now in-

clude men of high position and are become numerous, and its practitioners are now for the most part men who have received a medical education. The conditions of the problem are changed since the policy of exclusion was adopted, and the question now is : Shall we not change our policy? We cannot stamp out homœopathy, can we not transform it? We should approach this question, not with spite or anger, but in a spirit of justice and conciliation. Those who patronize the system, however they may be mistaken, are undoubtedly sincere, for men do not risk the health and lives of their families from mere desire to spite the doctors. Their choice should not be resented as an intentional injury to the profession. Among the practitioners, many now adhere to it more in name than in fact. Could they not be induced to withdraw from it altogether if they were sure of a good reception by the profession? In war it is sometimes good strategy to build bridges for a retreating enemy. Let us build bridges for our opponents.

We do not suppose that by the admission of homœopathists who have received a medical education to consultations we shall at first bring about great results, but it is a movement in the direction of conciliation, and may in the future

lead to the introduction of those men into our body, and of leaving outside the uneducated rabble, who will soon die of isolation. The measure we propose involves no violation of principle, but is in accordance with the highest principle.

The only safe principle on which to found the regulation of our professional relations is toleration ; not toleration of the truth only, but toleration of what we deem error. Let us proclaim that every man who has completed his medical education goes out with full right and duty to adopt such views as seem to him true and such practice as seems to him prudent and useful, and that those who entertain different views and adopt different practice have no right to condemn or oppose him except by fair argument. Such liberty is liable to abuse, and so is all liberty from its very nature, but it is by free thought and discussion that truth is elicited and error refuted. To me the assertions and arguments of Hahnemann's *Organon* seem so false and absurd, and the practice so inefficient, that it seems to me difficult to believe that any sane man can adopt them,—they almost surpass my power of toleration ; but his followers have the same right to approve that I have to reject them, and it is the business of both of us to fol-

low the dictates of our sense and conscience, and use our best efforts to sustain the truth and to refute error. This is so plain that it seems mere platitude, but it is difficult not to violate it in practice.

We violated this principle in our dealing with homœopathy in the beginning, when we made the profession of a belief in its doctrines a reason for rejection from the medical body, and thus prepared for the profession great trouble and humiliation. Adherence to the principle of toleration at that time would have avoided all this. There was much at that time to excuse the blunder into which we fell, but now that the consequences are apparent, there seems to me no justification for an obstinate refusal to correct it.

In some quarters there has appeared a tendency to a sort of trades-unionism, as though the great point was to guard the material interests of the profession. Such considerations are not worthy of discussion. It is the duty and the right of the medical body to guard its own honor and dignity ; it has no claim on the public further than may be consistent with public benefit, nor any right to shape its action with the view of driving away rivals.

I have discussed this question from the point



of view of sound principle and wise policy, and have stated the conclusion to which these seem to lead. The mode in which the measure adopted by the New York State Medical Society, has been received by the American Medical Association and other medical bodies, and by a portion of the medical public, seems to call for a few remarks. One would suppose that a measure in which the whole profession has a like interest, and concerning which an honest difference of opinion may exist, might be discussed with good temper and candor. But from the beginning, those who would limit the right of free scientific discussion and practice, and who would advocate the exclusion of others on the ground of difference of doctrinal views, have carried out their principle by denying the right even of discussing the wisdom of their measure of exclusion. They not only deny the freedom of opinion, but deny the right of calling in question their denial, and accordingly, with more consistency than good sense, they have received the proposed measure, not with argument, but with violent invective, and have met it by measures of marked intolerance.

We read in journals of men who have been forced from positions in medical institutions,



not because they have violated the rules of the old code, but because they entertained opinions adverse to the continuance of those rules. The National Medical Association forbids all discussion of this question ; exacts from its members a pledge that they will support the code of exclusion as it stands ; and, instead of proposing conference and discussion, summarily refuses admission to the delegates from the New York State Medical Society, an act of discourtesy which, though technically justifiable, perhaps, appears most intolerant and unwise when we take into account that the society receiving this affront, is the oldest medical society in the United States, and in weight of character, and in services to the profession, is at least the equal of the American Medical Association. The New York Academy of Medicine, following the bad example of the medical association, although under circumstances more unjustifiable, has taken measures to limit its membership to those who find it consistent with manliness and self-respect to sign a written pledge, that they will support the code of exclusion ; a measure of security, more usual and more fitting in bands of conspirators and malefactors, who are afraid to trust one another, than in associations of educated gentlemen.

The time for sober thought will come, and the principles and measures involved in this discussion must ultimately be decided by intelligent reflection, and not by the clamor of a noisy crowd assuming to be the guardians of medical interests and honor. To arrive at a decision which shall be wise and satisfactory, we need no suppression of discussion, no securing of pledges, no virtual expulsion of minorities, nor other devices borrowed from impure sources, but a free interchange of opinions, without passion or prejudice, and with one end in view, the dignity and usefulness of our profession.

# THE ETHICAL QUESTION.

By WILLIAM C. WEY, M.D.,

FORMERLY PRESIDENT OF THE MEDICAL SOCIETY OF THE STATE OF NEW YORK,

WITH A NOTE ON THE SUBJECT,

By JOHN ORDRONAU, Esq., M.D., L.L.D.

Discussion of the ethical question suggested by the recent action of the Medical Society of the State of New York, has occupied so much attention among members of the profession and intelligent people generally, and embraced such a wide range of subjects, pertinent and not pertinent, in journals, in newspapers, and in so-called scientific assemblages, that the merits of the simple issue between the contending parties in the controversy have temporarily disappeared from view. The spirit which formulated the words to the apostle, "Thou wentest in to men uncircumcised and didst eat with them," has been imitated in matters religious, political, and social, through all the succeeding centuries, and latterly its full meaning has been realized in the attitude of the defenders of the *old code* toward

the adherents of the *new*. An act simple in itself, and covered by a few plain words of text, has set the medical world, or a portion of it at least, in a decided ferment. That which had been foreshadowed in the history of the profession in the United States and elsewhere, came rather suddenly to pass. So suddenly, if we may credit certain writers who have endeavored to pervert the apparent interpretation of events, that the change in the code of ethics in our State Medical Society burst, like thunder and tempest, out of a clear sky, or was sprung like a "smart trick" in the serious deliberations of considerate and conservative men. In the hurry and confusion of conversation, animadversion, public correspondence, and the universal newspaper comment which followed the action of the Medical Society of the State of New York in 1882 and 1883, the causes which led to a modification of the scheme of ethics in relation to greater comity toward practitioners equally accredited before the law, became strangely and inconsistently ignored. The period of "swaddling-clothes," referred to by a distinguished speaker on this subject, in which the profession had been wrapped by the voluminous essay of Dr. Percival, had been followed, naturally and of necessity, by a more fitting and appropriate

robe of scholarly dignity, and, it may be said, of charity as well. The drift of professional thought in ethical questions had expanded from the confines of a prescribed rule to the widest range of personal and associate consideration. The obligations of the System of medical ethics adopted by the State Society in 1823, and the American code in 1849, have rested on the minds and consciences of physicians with very little appreciation of their seriousness and effect as guides to daily duty and behavior. Independent men in the profession, by which term is meant not bold, aggressive, or revolutionary men, but physicians of sober thought, elevated character, and positive worth in the community, have felt restless and impatient under the restrictions of all codes of ethics. Not that such men sought or desired opportunity to disregard the least or the greatest provision of any or all of the codes ; they were too loyal to the profession, too constant in the discharge of every moral and legal requirement imposed upon them, to countenance irregularities of any kind, in life or conduct. At the same time they were sufficiently liberal and beneficent to seek to extend to others the freedom which they desired for themselves. The constant reminder to men ethical under all circumstances, of rules which

they had no prompting to violate, imposed conditions which, as a whole, or specifically, presented the appearance of puerility or positive affront.

The fullest emphasis should be given to the assertion, that exemption from the provisions of the codes is not claimed because of personal considerations, or as a means of accomplishing individual ends. Methods of escape under old as well as new codes are made ingeniously convenient to such unethical physicians as choose to practise doubtful expedients, while professing adherence to the commands of the written law in medicine.

Doubtless, the System of ethics of the State Medical Society, while it met the approval of the profession generally, was contemned and viewed with small favor by physicians who felt disinclined to conform to its high order of requirements. Some must have despaired of their ability to attain the standard prescribed. From the standpoint of the present time of writing, it is difficult to conceive of perfect acquiescence in its comprehensive scheme of morals, unless inspired by that more than heroic impulse, suggested by the hymnologist, to—

“Stretch every nerve,  
And press with vigor on.”



The System of 1823 is particularized because it was the first of its kind issued by an authoritative body of medical men in the United States, and because it is more elaborate, as an exposition of morals, than any succeeding effort in that direction. The distance between 1823 and 1883, measured by the "System" of ethics, is so great as to appear almost startling. it affords illustration of the progress of sentiment, public and private, which in the space of sixty years can disenthral a great profession from the semblance of offences which are no longer to be mentioned as probable among its representatives. The System of 1823 deserves to be regarded with profound respect and veneration by the members of the profession who refer to it simply in connection with the phases of medical history it served to portray, if for no other purpose. This "System" accomplished its purpose in the day and generation in which it was promulgated, when the meaning of the word "quackery" denoted general, but not specific or legal, information. The writings of that period make constant reference to this expression, and the older volumes of the Transactions of the Medical Society of the State of New York, deal largely with the sub-



ject, in the many forms in which quackery appeared, as opposed to the legalized authority of the profession. Allusion is made to the origin of the phrase "irregular practitioner," and the significance attached to it in the quotation from Dr. Ordronaux, on page 83.

The principles which ran through and became interwoven in the system of ethics were of the most exalted character, and the influence of its precepts was of unquestioned value in cementing the purposes of a profession whose combined strength was like that of "an army with banners." Those principles, in essence and reality, have not lost a tithe of moral and binding force. The circumstances of the profession, however, have undergone a marvellous change; the thoughts of medical men and of the people have been subject to modification through the shifting events of increasing years, and the laws, and the opinions which make laws, have been revolutionized by the demands of the day and the hour, and the period has arrived, after much expectation, for a revision of the rules applied to medicine, which our fathers so guardedly established.

The attitude of the profession sixty years ago, in its relations toward the public and toward empirics, can only be understood in the light of

the history of that period. County medical societies and the State Medical Society had been in existence only seventeen years. By frequent changes in the statutes, the State Medical Society and the several county medical societies were furnished with power to admit individuals to the practice of the profession on the recommendation of boards of censors. This authority was decidedly more sumptuary than that conferred on medical colleges in the granting of degrees to practise physic and surgery in the State. Chartered medical colleges, in bestowing the degree in medicine, did no more than the obscurest county medical society had equal liberty to do. The former gave the degree of Doctor in Medicine in the form of a diploma, duly signed and sealed, which possessed the force of a *license* to practise physic and surgery. The latter, on the recommendation of its censors, gave license directly to an applicant, also to practise physic and surgery. License to practice, in the first instance, was called and covered by the name and fashion of a *diploma*; in the county medical society it was called by its proper name, a *license*,—and the terms are synonymous in legal meaning.

The design of a democratic form of government is displayed in the generous care which

sought to protect the rights of the citizen who desired to enter the profession by a way easier, cheaper, and fully as authoritative as that accomplished through the lecture-course of a medical college. The State of New York, at the time referred to, beyond the metropolitan city and the Hudson River region, was largely primitive in the habits and conditions of its people. This was especially the case in Western New York. "Sovereigns," in the republican sense of the term, they needed, in fact demanded, every protection that could be thrown around them by means of laws adapted to a state of civilization peculiar to a pioneer and agricultural period. Schools were inferior and not abundant ; academies were patronized by a comparatively privileged class ; colleges, by pupils with privileges yet harder to attain : and the road to the professions, through these partially closed avenues, put an effectual check on the aspirations of yeomen who struggled to subdue the forces of nature and advance the fortunes of their sons in the world.

The System of 1823 went into effect only a few years after the Legislature, impelled by a feeling of humanity toward the subjects of the State, donated a citizen living on the Hudson River, styled by courtesy a "Doctor," one

thousand dollars, in consideration of a specific for the bite of a mad dog, which was composed of superstitious rubbish. The same considerate spirit which cherished the lives of the people against the horrors of hydrophobia, undertook to make the way easy for some among them to obtain admission to the ranks of the profession.

In 1823, the brotherhood of medicine in one sense, and that a comprehensive sense, was of universal authority in the State. The colleges graduated one sort of pupils only, for the reason that orthodoxy flourished and bore fruit of its kind, and the State and county medical societies granted license to practise, which was regarded as valid over the whole nation, and perhaps in foreign lands. The diploma of the college and the license of the State and county medical societies represented the fullest measure of authority, under the law, which could be given to pursue a specific calling in medicine. Thus licensed, physicians were granted particular privileges, superior to those conferred on the members of some other professions, because of laws which gave being to the county medical societies and the State Medical Society. These privileges include the right to assemble together—in other words, the right of organization,—“to contribute to the diffusion of true

science, and particularly the knowledge of the healing art," quoting the language of the Act of 1806.

A recent writer in the *Medical Record*, April 28, 1882, Dr. E. D. Ferguson, of Troy, N. Y., says: "Is there any one who will claim for a moment that the law *created* the Medical Society of the State of New York, or, for that matter, any other medical society? It is simply an impossibility for the law to exercise such a function."

The following, from the pen of John Ordronaux, Esq., M. D., recently State Commissioner in Lunacy, and known to the professions of law and medicine for his writings and erudition, I am permitted to introduce, through his courtesy, in reply to the assertion made by Dr. Ferguson.

The exposition by Dr. Ordronaux of the *creation*, by the Legislature, of the State Medical Society and the county medical societies, is timely and cogent, and his review, though brief, of the subject of codes of ethics, in a convincing manner, covers the ground occupied by distinguished jurists in the elucidation of this question.

## A NOTE UPON THE LEGAL STATUS OF PROFESSIONAL ASSOCIATIONS.

By JOHN ORDRONAU, M.D., L.L.D.

## CREATION BY LAW.

1st. The term "*society*," in law, means simply a voluntary association of individuals agreeing to share profits and losses.

2d. There are two kinds of "*society*," viz.: *incorporated*, or those known to the law, being the creatures of some legal enactment ; and *unincorporated*, or private associations, not the creatures of the law.

3d. Voluntary or private associations of physicians, known as "*societies*," can exist without incorporation, and did, in fact, exist, in many counties, up to 1806, when *permission* was given them by Chap. 138 of the Laws of 1806, to incorporate themselves "by the names of the medical society of the county where such societies shall respectively be formed."

4th. By the Act of April 4, 1806, the State Medical Society was incorporated by the Legislature, in words which leave no doubt as to their character as a "creation," viz.:

"There *shall be* a general medical society, to be composed, etc., etc., *who shall meet* on the first Tuesday of February next, and the said



society being so organized as aforesaid, shall be, and they are hereby declared to be, a body corporate and politic in fact, and in name, by the name of the Medical Society of the State of New York." (4 Webster, 537.)

This society was as much a creation of the State as any other corporation, and without some such legal enactment behind it, would have had no other status than that of an annual convention of physicians or merchants. In order to give it perpetuity, with authority to sue and be sued, to hold or to convey property, it had to acquire the artificial personality of a corporation. This was a condition precedent. The State "creates" corporations through its Legislature, whenever it sets into operation the instrumentalities for forming them, and grants at the same time the necessary permission to specified parties to enjoy them. No corporation can, without some *permissive* enactment, organize itself. The State is the "*creator*," the individuals are only the organizers. For the organization *per se* amounts to nothing without the "created" and preceding authority given it to exist, when compliance has been made by it, with the conditions annexed to the permission or grant. Accordingly, it has been held, that to create in law is to make that which never



existed before, because the mere disposition of individuals to incorporate themselves is insufficient without a preceding authority created by law. (*Moors vs. City of Reading, 21 Penn., St. 201.*)

#### CODES OF ETHICS.

All laws have an ethical side, in that they seek to secure a good to society, by checking encroachments upon established rights, or enforcing new duties. It is the duty of the State to inculcate morality, without promulgating special codes or creeds. But it has a right to limit and abridge the exercise of the individual practice of morality, by forbidding certain things, even though treated as ethical and self-regarding by persons or associations. Enforced observance of the Sabbath, of personal decorum in public places, and of quiet demeanor in churches, etc., etc., are illustrations of this right of the State to regulate ethical conduct. Hence, when an indicted Mormon pleaded his religious belief in defence of his plural marriages and quoted the Bible patriarchs in support, the Supreme Court of the United States held that the *law of the land* was superior to any code of ethics which contravened its provisions. (*Reynolds vs. U. S., 8 Otto, 145.*)

The right to practise medicine is now, by the laws of this State, a franchise. And as the State protects religion, without favoring any particular tenets, so it protects the practitioner of medicine, which it has itself created, without inquiring into his individual tenets. His diploma from an incorporated medical college gives him an *universitas juris*, as a physician throughout the State. In the eyes of the law every graduate of a medical college in this State is made the peer of every other graduate.

When the State Medical Society was created, and a code of ethics was promulgated by it, there was but one school of practitioners in the State, and but one system of therapeutics taught in medical colleges. The term "irregular practitioner" then meant *non-licensed* or non-graduated practitioner. Now that the State has incorporated various denominational medical schools, the term "irregular practitioner" can not be applied to any of their graduates. There being no system of State medicine, all their graduates stand on an equal footing. (*Corsi vs. Maretzek*, 4 E. D., Smith, 1.)

Any code of ethics, therefore, which publicly stamps with contempt, or endeavors to lower the professional standing and character of a graduate of a medical college in this State, be-

cause of its denominational form of practice, is a violation of the protection which the law owes and has guaranteed him, as a creature of its own, and he may have his remedy just as much as any one whose character is slandered, if he can prove that in any instance some one was deterred from employing him because of the bad repute given to his professional practice. (Townshend on "Slander," p. 281.)

In *White vs. Carroll*, 42 N. Y., 161, Judge Sutherland said: "I do not see why in this State since the Act of 1844, the allopathic and homœopathic physicians have not had, and have not now equal and the like remedies for slanderous or libellous attacks upon their professional reputations or characters."

And in *The People vs. the Medical Society of Erie County*, 24 Barb., 579, the Court said that: "The society is not simply a voluntary association of gentlemen for social purposes or mutual improvement under rules and regulations adopted by themselves. But it is organized under the statute, and such organization is a corporation.

"The by-laws, rules, and regulations are not to be contrary to *nor inconsistent with the laws of the State.*"

By section 9 of the Laws of 1806, repeated

in section 14 of the Laws of 1813, it is enacted that it shall be lawful for such county societies, and State medical society, to make by-laws and regulations relative to the "*admission and expulsion*" of members; and such rules and regulations must not be contrary to nor inconsistent with the Constitution and *laws* of the State, nor of the United States. A code of ethics, as a form of by-laws, must necessarily fall within this limitation, and if it passes beyond it, is not only invalid, but exposes the corporation to the risk of a *quo warranto*.

By chapter 384 of the Laws of 1857, homœopathic physicians were authorized to organize themselves into county societies under the same amended Act of 1813, as all physicians had previously been authorized to do; and this Act of 1857, was further declared to be a *public Act*, thus assimilating them in law, where organized to all other medical societies.

It is evident, therefore, that in both Acts of 1806 and 1813, the words "*admission and expulsion of members*" are words of limitation, precise and definite of their kind, and do not authorize the passage of any code of ethics regulating the private conduct of a member in his professional practice. The allegiance due to such a code is purely voluntary, and its

infraction gives no legal right of expulsion as seen in the case of *The People vs. The Medical Society of Erie County* before cited.

These are the views generally adopted by analytical jurists, among whom no one stands higher in this country than the late Prof. Lieber. In his chapter on associations he thus summarizes the subject in these few trenchant words :

“ It is safe to say, then, that all associations formed for the avowed purpose of regulating the moral conduct of its members by means of pledges should be resorted to by way of exception only. We might otherwise dissolve society into numberless associations of a similar kind, and coercion and violence instead of freedom of conscience would be the consequence. In a free country there is this additional danger, that such associations once formed and having obtained a stronghold upon the affections and sympathies of its members, most easily become channels and vessels of political agitations and dissensions.” (“ Political Ethics,” vol. 2, pp. 197-8.)

The language of the system of ethics of 1823 is a reflex of the fraternal relations which existed in the organizations, State and county, in that golden period of our medical history.

Some of the expressions, in view of the presentation of the code of 1882, exhibit a degree of far-sightedness which must be a surprise to many who are inclined to cavil at the so-called "liberal" tendencies of this later instrument. The following sentences read like a paraphrase of the words in the code of 1882, which bear upon the subject of consultations, and which have been so remorselessly criticised and condemned : " Honor and justice particularly forbid a medical practitioner's infringing upon the rights and privileges of another who is legally accredited, and whose character is not impeached by public opinion or civil or medical authority ; whether he be a native or a stranger settled in the country. There is no difference between physicians but such as results from their personal talents, medical acquirements, or their experience ; and the public, from the service they receive, are the natural judges of their intellectual advantages."

What was merely a sentiment in morals, of the loftiest character in 1823, became the law thirty-four years later. These words just quoted might with eminent propriety be embodied in the code of 1882, because of their applicability to practitioners who then, as now, under the shield of the statute, are entitled at least to professional



courtesy, and it may be to closer affiliation. These extracts possess almost prophetic meaning when considered in connection with the action of the State Medical Society in 1882 and 1883, in insisting on "the rights and privileges" of others, "legally accredited and whose character is not impeached by public opinion or civil or medical authority."

Public opinion long ago ceased to have respect for a separate system in medical practice, and it may be added that what was formerly considered "an exclusive dogma," and repellent to fraternization, has been proven to be in harmony with the declaration of the American code, that "a regular medical education furnishes the only presumptive evidence of professional ability and acquirements, and ought to be the only acknowledged right of an individual to the exercise and honors of his profession."

The influence of public opinion, stimulated by the wisdom of the medical profession, to use a forcible expression, "took the conceit out of" the idea and the practice of "an exclusive dogma," and relegated the latter where it belonged, and where it was stripped of all subterfuge and made to take its place for just what it was worth, in practical experience. Judged in this



way, "an exclusive dogma" merged in orthodox medicine and became a part of it, not in theory, for that had been virtually discarded, but at the bedside, in the dispensary, and in the every-day work of the practitioner.

It remains to be seen if professional character has been or can be impeached by "medical authority." That an attempt was made in this direction, the American code illustrates. The truth of history makes it apparent that the American code was ingeniously devised as a paper blanket to cover the profession in the United States, with solicitude positively maternal toward its subjects, while its real purpose was embodied in a few words in respect to "an exclusive dogma," which rendered it distinctive, arbitrary, and, as the results have shown, actually stultifying in declaration.

While the American code experienced no change, public sentiment advanced and broadened. It looked, at times, as if the parties liable to be impeached by medical authority might in turn become impeachers, so rapidly grew the heresy denounced by the American code. From the moment of being thus stigmatized, "an exclusive dogma" assimilated more and more with "regular medicine," so styled, and finally became a recognized branch, if not an integral part of the original stock.

As medical authority proved insufficient to impeach properly accredited qualifications and professional character in 1823, and again, by a few words in rhetoric in 1849, it was deemed expedient not to invoke this questionable influence in 1882 ; hence the dignity of the law and the self-respect of the profession were recognized and vindicated in the phraseology in regard to consultations, which marks the distinguishing feature of the new code. Medical authority, in its application to the text and spirit of the code of 1882, means conformity to the will of the people, expressed through their representatives, in the acts of the Legislature. The previous fealty of the medical profession to the supremacy of the law, renders its present attitude of obstruction to the permissive consultation clause of the code of 1882 both awkward and insincere. The simple logic of events is overlooked in a fruitless intention on the part of certain members of the profession to maintain an authority which has been completely taken away from them, and which cannot again be delegated to medical men. Better than follow such an ambition, would be the abrogation of all rules for the guidance of the profession.

In this connection it may interest some readers to mention that while the code, in its widest

range of subjects, was being discussed in the committee entrusted with its revision by the State Medical Society in 1881, a question was raised in respect to the propriety of discarding such an instrument altogether from the written law of the profession, thus giving to physicians the same rational liberty in matters ethical, which is enjoyed, without the evils of license, by other bodies of learned men. The propriety of such an act, considered generally and specifically, was not doubted in its far-reaching effects on the profession and the public mind also. Its feasibility, as a recommendation of the committee, was seriously questioned. It was believed that a proposition to annul all ethical rules was not covered by the resolution of the State society, which placed the subject in the care of the committee, and further that medical sentiment was not prepared for such a hasty departure from the dogmatic teaching of the fathers in medicine. It was agreed, however, that the abolition of all codes was in accordance with an enlarged appreciation of the dignity and achievements of medical science, the urgencies of enlightened and conscientious practice, and the common-sense of the people at large. Conformity to printed rules of conduct in the government and intercourse of a privileged

professional class in society was quite heartily deprecated.

From the organization of the several county medical societies, and the State Medical Society in 1806, down to 1857, a "legally accredited" practitioner of medicine was a physician of the regular practice, as mentioned by Dr. Ordronaux. The law, as shown, took cognizance of no other practitioners. The title of the State Medical Society, as originally "*created*," was as it continues to be, The Medical Society of the State of New York, and the several county medical societies have been known from the beginning, for instance, as the Medical Society of the County of Kings, the Medical Society of the County of Ontario, etc. In 1859 an act was passed by the Legislature to incorporate homœopathic medical societies, and in 1865 eclectic medical societies were similarly "*created*." These societies, through boards of censors, enjoyed all the privileges conferred on the State and county medical societies, to which reference has been made ; and medical colleges, homœopathic and eclectic, under the same domination, received authority to bestow the degree of Doctor in Medicine. In this manner homœopathic and eclectic practitioners became "*legally accredited*," or, to employ the words of the

code of 1882, "lawfully qualified," and this is their status at the present time.

Much as we may reject the doctrines of homœopathy and despise the open and unblushing empiricism of many who assume to practise according to its methods, and offensive as the ignorance of the followers of the so-called eclectic school appears, we cannot shut our eyes to the fact, under the law, that the disciples of these kinds of faith have rights equal with those brought up at the feet of the medical Gamaliel, in the discharge of professional duty. We must accord to some, indeed to many, homœopathic practitioners, pure morals, thorough education, social recognition, great industry, and good results in the practice of the medical art. It is readily demonstrated that homœopathy, as understood by the followers of its peculiar practice, constitutes, only *in name*, a distinctive system in medicine. In other words, there is no genuine homœopathic practice. There is, however, a formidable semblance of it, and this show, or illusion, has a large clientage. Time has proven the fallacies of Hahnemann in respect to the production of disease and its treatment, and the many pretensions of the system, one following another, have been withdrawn under the scrutiny of experiment and observation. Rational

medicine is fast absorbing even the more reasonable propositions of homœopathy.

History repeats itself. The State legalized not only the practice of homœopathy, but the production of homœopathic physicians, and of eclectics also. The State did not restrict the rights of physicians then in practice when it gave them power. It generously, we may suppose, increased and extended professional franchises in the direction of those who sought such favors.

The State having removed all barriers between "schools" in medicine, it seemed natural and becoming, in the line of obedience to the behests of the law, that those who have been regarded as qualified to assume the rights and privileges to practise physic and surgery, should be accorded recognition at the hands of professional men who, from the first, have enjoyed the amplest liberty in connection with the prosecution of their calling. In the eye of the law and in the estimation of the people, the profession is *one*, with a strong popular feeling in favor of that portion of it which is oppressed by the other portion. It does no good to prate about a want of appreciation of this question by the lay element in society. Only time will establish a correct discrimination between legitimate



medicine, cultivated in a proper spirit, and methods of practice which are used for ulterior purposes. It may be said, in parenthesis, that quite as much of individual disregard of ethical proprieties attaches to the followers of the old as to those of the new school. But this is a matter about which it is hardly proper to write at length, in commenting on the code, though really pertinent to the question. The fact that a code of ethics is believed to be necessary, and that representative men, who personify the highest morals in the profession, insist on having it full and specific, appears like a general publication of the shortcomings of our brethren, which reads not a little after the style of the penal code, recently adopted in the State of New York. A nice sense of morality, with or without education, lifts a man beyond the need of rules for individual conduct; education without moral direction, makes him indifferent to the plainest teaching of ethical verities.

Why hamper the profession with written details in respect to personal character, quackery, consultations, specifications of medical police in practice, and forensic medical police—the divisions of the System of 1823; or the more numerous titles of the American code, or even the three articles of the code of 1882?



Why not strike from our by-laws all reference to the manifest duty of the physician, in the general conduct of the man ?

In the discussion of this subject it should be kept in mind that the recent action of the State Medical Society has effect, primarily, on the profession in our own borders, and subsequently, on the brotherhood at large in the country. The conclusions reached in 1882 and 1883, by which a new code was adopted in the former and confirmed in the latter year, had the support of legal authority, which is more than can be said of the proceedings of the American Medical Association, in particulars great or small. The State of New York stood behind that action, and it is a mistake to suppose that the profession in this commonwealth is in any manner subject to the will or judgment of the American Medical Association. Voluntary in character, the latter is maintained solely by the acquiescence of the medical organizations in the several States. Its code is a pledge to be accepted or rejected, as the profession may elect. It is an anomaly in connection with our State Medical Society, which no one attempts to explain, that the System of 1823, and the American code were equally acknowledged in that body. It does

not appear that the System of 1823 was abrogated when the American code was adopted.

It has been remarked in the hearing of the writer, by physicians who take opposite sides of the question under review, that the New York System of 1823 is superior, in all particulars, to any code since written, in the breadth and profundity of its justice and morals toward the profession and the public.

After full consideration of the subject, in its near and remote consequences, the State Medical Society, in 1882, saw fit to declare against a restrictive clause in the code, in the matter of consultations among physicians. This overturning of the accepted rule, which had become a dead letter in matters of observance and respect, appeared to be clearly demanded by the necessities of the times in the State of New York. The question reached practical solution sooner here than elsewhere, and in the State Medical Society, the fittest place where a decision could be maintained with dignity commensurate with its importance. That body did not claim, but possessed, power to speak for the profession, and its voice carried no unmeaning sound when it abolished an ethical rule which retained not a shadow of justification in this State, however much it may be respected and

treated as compatible with law in other States in the Union.

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It is pitiful that the profession of medicine should demand or require the perpetuity of a system of rules for every-day conduct, in a vocation which is supposed to reflect purity of character, singleness of purpose, and conformity to the usages of good society.

# OBJECTIONS TO THE CODE OF ETHICS AND TO THE DISCIPLINARY AUTHOR- ITY OF THE AMERICAN MEDICAL ASSOCIATION.

BY DANIEL B. ST. JOHN ROOSA, M.D., LL.D.,  
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There probably never was a conflict of opinion, during which there could not be found a third party, the members of which were not only unwilling to take part in it, but who also asserted that both sides were wrong. In the struggle between those who are endeavoring to re-enact in the State of New York, the present code of ethics of the American Medical Association, and those who are opposed to such a re-enactment, this third party is not wanting. Its adherents believe that the beginning of the conflict was unnecessary and wrong, and that its continuation is impolitic and injurious to the interests of the medical profession. Those of us who object to the code of ethics, and to the authority, of the American Medical Association, consider the conflict to have been inevitable and therefore irrepressible. We do not think that

it would have been possible to restrain agitation on this subject for any length of time. Those who believe in the enforcement by discipline of detailed and written codes of ethics have for many years enforced their opinions upon the whole profession, by organizing societies for the purpose of excluding from the enjoyment of the honors, distinctions, and good name of the regular profession, those who would not consent to agree to a code of ethics and etiquette, which they had set up. While they are content to take no steps against the notorious evil of allowing imperfectly prepared men and women to practise medicine, they insist that those who do not believe it wrong to give their opinions to homœopaths, eclectics, and other "irregular" practitioners, shall be ostracized and treated ignominiously, as far as their power extends. Between them and us there must be a conflict, for we ask for ourselves what we consider an inalienable right—that of giving our professional advice wherever and whenever we choose. Besides, we demand that we shall be allowed to do that which seemeth right in our own eyes, in all matters pertaining only to good taste and to personal conduct not injurious to the common weal.

We believe that the law of the land will

punish our crimes, if we become criminals, and if we offend in matters of etiquette and manners, that we shall, sooner or later, according to the standard of our peers, be banished to a coven-try whose terrors will prevent other sinners from imitating our example.

Since the origin of the recent conflict in the State of New York, caused by the repeal of the old code, the spirit of those who would re-enact it has been plainly shown. Physicians have been told by those who assumed or actually had some power over them, that they should lose professional positions, practice, and opportunity for advancement, unless they signed papers advocating the old code, or if they declined to vote for measures taken to secure its re-enactment. Societies made up of regular members of the medical profession, have passed resolutions in which they advise their members, and promise for themselves, not to send students to colleges whose professors may not be friendly to the old code, nor their patients, for whom they may desire consultation, to experts who may be of the same mind. One college, the secretary of whose faculty is president of a society formed to assist in re-enacting the old code in our State, announces in its advertisement that, the "standard of medical ethics recognized by this



college is contained in the code of ethics of the American Medical Association." It is notorious that it is only by such coercive arguments as I have just mentioned, that the faculty have agreed to such an announcement, and that it is a declaration repugnant to the feelings of a few, at least, of the body of teachers composing the college. These things, and others which might be mentioned, indicate that there is an attempt to exercise what the late Dr. Francis Lieber, during the years of the anti-slavery agitation before the Civil War, called the "tyranny of the minority"; for I have no doubt that, if an unawed, unintimidated, and perfectly free vote of the profession of medicine in this country could be had, the large majority would favor an unwritten code of medical ethics. In other words, they would be glad to leave the subject of medical ethics and etiquette to the personal discretion, justice, honesty, and humanity of each practitioner. When men of distinction and character in the profession feel obliged to resort to such measures as I have indicated, to put in effect their opinions as to the necessity of a code, it must be evident that a thorough discussion of the whole subject is necessary before the profession can come to an harmonious conclusion. As a part of this discussion, I contribute my

objections to the code, and to the authority of the American Medical Association.

I. *A large part of that code is unnecessary, and some of it is positively puerile.*

The first paragraph of the first article of that code reads as follows : *A physician should not only be ever ready to obey the calls of the sick, but his mind ought also to be imbued with the greatness of his mission, and the responsibility he habitually incurs in its discharge.* This is all very true, but will any one seriously claim that it has any place in a code which is to be enforced by a legally authorized body. A little later on, in this same section, it is stated that there is no tribunal other than his own conscience, to which a physician can be brought for carelessness or neglect. Why then attempt to enforce a code on matters much less weighty than carelessness and neglect?

What I should give as a specimen of puerility in the code, is the paragraph in which physicians are told, that they should study in their deportment to unite *tenderness* with *firmness*, and *condescension* with *authority* (the italics are those of the code), in the management of their patients. In the third paragraph of this article, frequent visits to the sick are advised, unnecessary visits are not advised, and the reasons for this advice are given.

In the next paragraph, gloomy prognostications are condemned, and the physician is told that he should be the minister of hope and consolation. In the fifth section we are advised not to abandon cases that are deemed incurable. The sixth paragraph tells us that consultations should be promoted in difficult or protracted cases, as they give rise to confidence, energy, and more enlarged views in practice. These are specimens of what I consider to be utterly unnecessary laws. They contain advice that Dr. Percival might properly enough have given to his son, or which any experienced physician might properly give to a young practitioner, but such essays on good manners are hardly suited for the formal declarations of scientific bodies. As to the obligation of secrecy in professional matters, as enjoined in the second paragraph of the first article, the law determines just how far information obtained by physicians may be made a matter of evidence. He who believes, that the professional gossip, who goes about retailing the foibles, manners, and circumstances of his patients, may be cured by a code, must be credulous indeed.

The second article of the code is devoted to the *obligations of patients to their physicians*. In it the laity are told what kind of a medical ad-

viser they should choose, what his habits are to be, that he must not be devoted to company or pleasure. Patients are also informed that they should unreservedly communicate to their physician the supposed cause of their disease. Quite a glowing paragraph is made of directions to a patient, never to weary his physician with a tedious detail of events or matters not appertaining to his disease. Patients are advised in another section to send for their physician in the morning, before his usual hour of going out.

This extraordinary article closes with an enumeration of the feelings, with which a patient, after his recovery, should entertain as to the value of the services rendered him ; and finally, he is plainly told that no mere pecuniary acknowledgment can repay or cancel them.

Perhaps, it would be well, if this article were published as a tract, to be given by physicians to the families whom they may attend, and to be left conveniently in waiting-rooms for the perusal of office patients. Seriously speaking, it is an impertinence for the medical profession to publish directions, as to the treatment they are to receive from their patients. The medical profession will receive the respect of the public, to such a degree as it may prove worthy of it.

It has no right, in our time at least, to ask that any peculiar honors be awarded it, or that any peculiar respect be paid to it. This article savors strongly of the gold-headed cane, vinaigrette, and full-bottomed wig of Queen Anne's time. By its publication, we are giving advice to those over whose manners we have no control, and to those who have not asked us for it. Yet, if we could believe that the circulation of the code, would prevent patients from wearying their physicians with a tedious detail of events not pertaining to their maladies, I think we should all be glad to assist in it, but so long as human nature is human nature, patients will behave to their physicians about as their education and character may determine. Not even this code of ethics, will prevent garrulity or exact straightforward answers.

The next section of the code is devoted to the *duties of physicians to each other, and to the profession at large*. It assumes that there are peculiar rules for the government of its members, and there is some very sound advice as to "contumelious or sarcastic remarks relative to the faculty," together with injunctions that we "should enrich the science by all honorable means."

The members of the profession are cautioned

against public advertisements of their skill, boasting of cures and remedies, and so forth. The professions of law and of theology have no such explicit code, and it has not been found that the members of these professions, have been greater sinners in these points of good taste than have the doctors. They have sought other means for maintaining the proprieties in their calling, than those adopted by the American Medical Association. It is doubtful, however, if the injunction that a physician shall not hold a patent for a surgical instrument is a proper one. Perhaps the same objections may be held against securing a copyright for a book, as for a patent of an electric battery, for example. If Helmholtz had secured a patent for his ophthalmoscope, he, as well as the opticians who manufactured them, would have been enriched, but I fail to see how the profession or the public would have suffered. This section of the code also forbids the dispensing of secret nostrums. This, is so clearly a law that never would be violated by a properly educated physician, that it might be safely left unwritten. One of the strikingly unnecessary parts of the code is that devoted to the *professional services of physicians to each other*. The code states that all practitioners, their wives, and their children,



while under paternal care, are entitled to the gratuitous services of any one or more physicians residing near them. The unwritten code has always approved of even a greater exhibition of fraternal feeling than that here advised. Physicians have always been willing to give their services to any of the faculty, whether they resided near them or not. As a matter of fact, experts and specialists are in the daily habit of treating physicians and their families residing in many instances, very remote from those whose advice they seek, without a thought of fee. I have never known of an instance, where members of our profession have expected, much less demanded, fees from each other. I do not believe that the code has had any thing to do with the establishment of this custom. The fact that the general habit of the profession so far exceeds the demands of the code, is a slight evidence of how is unnecessary any publication on this subject. *Noblesse oblige* has been a motto, in the main, carefully held in mind, by the members of our liberal calling.

The code also devotes an article to the duties of physicians in case of interference. It tells us what we shall do if another physician attempts to take away our cases, by *meddling inquiries, disingenuous hints, illiberal insinuations*, and so forth.

Certainly we are governed too much, when laws are made with a hope of correcting or preventing such offences as are thus outlined. A man who makes meddling inquiries about the patients of another practitioner, or who plots to take a case away from him, or who actually takes a case belonging to another physician, is not a gentleman certainly, but he will hardly be made one by a written code.

The character which will prevent a man from the offence of interfering with another man's business will never be formed, unless it be moulded by the parent, the spiritual and secular teachers, long before he begins to study medicine.

II. *Another objection to the attempt, to enforce respect to the ordinary amenities, that should obtain among educated gentlemen, by a detailed and written code, is, that it proves ineffectual.* According to the daily newspapers of the period, the code of ethics had not sufficient restraining influence upon two members of the American Medical Association, at its last meeting, to prevent them from a serious altercation, in which bad names were called and blows given, although one of the members engaged in this quarrel, had presented a new test a few hours before, binding all the delegates to the observance of the code, then and hereafter. Tradition tells of other

ethical offences of the same character as the one just mentioned, at previous meetings of this association. Gentlemen will be gentlemen with or without a code. Those who are not, we cannot make such by law. Their offences against good manners, can only be restrained by individual procedures, as each circle may find it necessary to protect itself by discipline. The opponents of the old code have never objected to this. In fact, we claim to be the most earnest for the punishment of those who may be guilty of conduct unworthy of a physician and a gentleman.

Another example of the inefficacy of the code to enforce fair treatment of an opponent in debate, when a vote is to be taken, may be found in some recent proceedings in New York City. Some of the most prominent and active advocates of the old code arranged, by secret meetings, a plan for packing a session of the Academy of Medicine. They issued orders to the members of an association formed to secure the re-enactment of the old code, to be present, while they carefully avoided allowing their intentions to be known to the other side. Having carried out their plan, and secured a meeting in which they were largely in the majority, they proceeded to pass a resolution which would make an additional test for the applicants for

admission to the Academy. One of the leaders, after he was asked if the object of his motion was to "throttle the Academy," answered, "undoubtedly it is."<sup>1</sup>

These things show, that even those who believe that written codes are effectual and necessary, to restrain men from conduct clearly in violation of good manners, are not themselves restrained by them. But it is unnecessary to continue this commentary upon the details of the code to which I object. If the reader will look over its pages, I believe that he will be convinced of the correctness of my objections. Before I turn to a discussion of the kernel of this whole contention, that is the consultation clause, I may say, that I think objection may fairly be made, to the article of the code, which advises that rules should be made "in every town or district relative to pecuniary acknowledgments" from patients. This is an exhibition of trades-unionism, for a man's services are worth what he can get, and one man's may be worth much more than another's. No association of physicians should have the power to fix the fees of its members. In very few places, is this article heeded, however; custom and individual ability and popularity regulate our fees about as they

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<sup>1</sup> *Medical Record*, vol. xxiii, p. 473.

do those of lawyers, and the salaries of clergymen. But, as I have intimated, the conflict now waging in our profession over the code, does not at all turn upon the unnecessary hand-book of etiquette which has so far been commented upon. It is the consultation clause which is the real basis of all the trouble.

III. I regard this clause, as it is interpreted by the American Medical Association, and as it is probably fairly interpreted, *as unjust, inhuman, and in the State of New York, I think, any attempt to enforce it by the discipline of those who violate it, would be held by the courts to be illegal.* I am careful to state, as interpreted by the association ; I am aware that there are some of its distinguished adherents who claim, in the language of Doctor Gihon<sup>1</sup> of the United States Navy, that "it nowhere prohibits the intelligent physician giving his advice to any one whomsoever, who may seek it."

But, this is not the view generally accepted, and he who reads the history of Dr. Gihon's election to a vice-presidency of the American Medical Association, will find, that after the paper, from which I have made an extract, was read, the doctor's ethical soundness was questioned on account of this interpretation, and that he would have found it very difficult to have

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<sup>1</sup> *New York Medical Journal*, July 7, 1883.

been elected to any office whatever in that body, if he had not hastened to say that he adhered to the old code and that he practically recanted this interpretation. The passage in the code, which says that no one can be considered as a regular practitioner, or a fit associate in consultation, whose practice is based on an exclusive dogma, and so forth, means, according to the authorized interpreters of the old code, *thou shalt not consult with a homœopath, with an eclectic, or with any man, who has not subscribed to the code of ethics of the American Association.* With this, I take issue. It would be easy to quibble, and to say that this code does not prevent consultations, because there are no persons, if they ever existed, whose practice is based on an exclusive dogma "to the rejection of the accumulated experience of the profession"; but I must decline any such escape from the penalties of the violation of the code, for it is well understood everywhere in the profession to mean what I have indicated. In my opinion, if a practitioner of our school—which I consider to be the rational and true one—is asked to meet an adherent of homœopathy, eclecticism, hydropathy, or even a peripatetic quack, he has an inalienable right to do just as he chooses, without asking the consent of any college, medical association, or



set of men, of any kind whatsoever. In my opinion, the expediency or wisdom of thus giving his advice, is a matter that belongs to him, and to no other person in the wide world. I have made the case just as broad as any exigency can possibly make one, so that I may more clearly state my opinion. It is sheer nonsense to say, that if an educated physician gives his advice to an ignorant one, or to one whose practice is narrow and absurd, that the educated man thereby renounces his own opinions, degrades himself or his profession. Just as much would an accomplished British officer, lower himself by a conference with a Zulu chief, upon the subject of the release of prisoners, as would a regular physician degrade himself by a consultation with any person who had authoritative care of a suffering human being. It is absurd, to say that he affiliates with, and adopts the notions of the man who has charge of the case, and who has asked him, or who has consented that he should be asked, to see the patient. The advocates of the old code have distorted the meaning of the word consultation, in order to prove that those who advocate freedom in consultations would degrade their calling if allowed to give their advice wherever asked. The act of consultation is nothing more or less, than

“the deliberation of two or more persons, with a view to some decision” (Webster). It has nothing whatever to do with one’s professional position, any more than has a medical visit to a pauper, to do with a social status of the physician making the visit. It is a matter, in my opinion, in which a medical society should no more seek to control its members, than it should endeavor to regulate their style of dress, or their social intimates. The difficulties which have been thrown about the meeting of a non-sectarian practitioner, with the so-called dogmatists, or with ignorant men are illusory.

A consultation means no more in medicine than it does in any sphere of life, where conferences over difficulties are held by men who have a common end in view. If the regular medical profession can be made perfectly free, I am very sure that it will maintain itself everywhere, while the disciples of error will go to the wall. If, however, the old state of things be continued, and a high wall be kept up between us, and those whom we desire to convert, the cause of rational medicine will be delayed in its progress. The old code wisely says “the good of the patient is the sole object in view.” I plead simply that this may never be lost sight of, and if this be so, the matter of consultations will

be unreservedly handed over to the individual good sense, honesty, and humanity of each practitioner. Instances are not wanting, almost every experienced practitioner in the land can give them, where the interests of humanity have been sacrificed to an obedience to this part of the code of ethics. The writer knows physicians whose consciences still have sharp twinges, because, in obedience to the common interpretation of their ethical code, they have refused to give much needed assistance, in cases where the head of the family declined to turn from his door, a homœopathic practitioner who was the ordinary medical adviser, and also a personal friend.

In regard to the illegality, in our State, of a rule which would render those who consult with homœopathic or eclectic practitioners liable to discipline, I have only to say, that I find that Doctor Wey and Doctor Ordronaux have so fully discussed this subject in another paper of this volume, that it needs scarcely any further comment. I will simply add, that whatever may be the case in other States, members of the homœopathic and eclectic State societies, are just as much legally qualified practitioners, as are the members of the society founded in 1809.

This latter society is bound by the law, to

make no by-law contrary to the laws of the State. That it would be a violation of law, to discipline a member of the old State society, for consulting with those in affiliation with the homœopathic or eclectic societies, is, I think, perfectly clear. This, be it noted, however, is a great way removed from compelling a member of one body to consult with another, although the advocates of the old code have strangely enough, assumed, that freedom in consultations *compels* an old school or regular practitioner to consult with any one who may call him.

IV. I now turn to the last part of my paper, the disciplinary authority of the American Medical Association. As has been shown by Doctor Piffard, in his excellent papers in the *New York Medical Journal*, this association was in the beginning a mere congress of physicians throughout the country, called together chiefly at the instance of some members of the New York State Medical Society. It has never secured a charter, and remains a voluntary organization. However it may assume them, it has no rights over ethical matters in the State of New York.

Our State society, at a time when it was much less representative than now, at the instance of the American Medical Association, adopted a

code of ethics which was made up from the writings of Dr. Percival, with an addition in the consultation clause intended for the homœopaths, instead of its own code adopted in 1823, or, as some authorities say, without repealing its own code. Both these codes were a part of the by-laws of the society. It had as good a right to repeal that of 1848, as it had that of 1823, or as it has to repeal any by-law. The friends of the old code in our State, who insist that the American Medical Association alone shall have power to change our code, are strangely inconsistent, for in 1883, at the annual meeting of our State Society, they voted solidly for certain resolutions which look to a consideration and settlement of the code question, without any reference to the American Medical Association. The assumption of the supreme power of this unchartered congress, over the affairs of the States, is clearly an after-thought of those who have formed an association for the re-enactment of the old code in our State. A national body of physicians which shall have disciplinary power over the profession in the various States, should be very differently constituted from the American Medical Association. It should not be peripatetic, and things should

be so arranged that it would represent the different States of the Union equally well. If we are to have such an association, it should be one without a judicial council acting as a star-chamber, and managed by a junto, who have undertaken to control matters over which they have no concern, and which they do not seem to understand. It should be a legal body, amenable to legal processes, in case it should attempt to commit such an injustice as was perpetrated at the last meeting of the American Medical Association, when an *ex post facto* law was made by its judicial council, and members were required to take a new pledge, before they could take their seats. Finally, it must be a body devoted chiefly to the scientific and legislative work demanded of such an organization. Even if such an association could be formed in our vast country, I hold that it would have none but advisory powers over the inalienable rights of the members of the profession. But such a body, would command a respect which the one as now constituted, has as yet failed to secure.

To compare the present American Association with the British Medical Association, is to compare things that are unlike in every respect except in name and avowed objects. If the British Medical Association were to attempt



such a high-handed procedure as to the enrolment of members, as was successfully carried out by the judicial council of our association at its last meeting, it would soon be taught better by the strong hand of British law.

It is certain, that the Medical Society of the State of New York, having deliberately shaken off the bond which placed it in the power of the judicial council of the old association, will never again allow itself to be fettered by it.

Our society deliberately made its own rules and repealed or abolished them at pleasure, long before the American Medical Association existed. It will be strange indeed if it consents to give up its legal and natural rights.

It only remains to be said, that the writer of this paper, objects to the new code, except so far as it allows liberty in consultations, for the same general reasons which he has given in his commentary on the old code.

It is my opinion, that those who voted in 1882 for a simple declaratory resolution against conduct plainly unworthy a physician and a gentleman, more nearly represent the feelings of the majority of the best minds in the profession, than do the advocates of any formal and detailed code.

# THE INFLUENCE OF THE EVOLUTION OF LAWS REGULATING THE PRAC- TICE OF MEDICINE UPON SPECIAL CODES OF MEDICAL ETHICS.

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The Act entitled "An Act to Regulate the Licensing of Physicians and Surgeons," passed May 29, 1880 (chap. 513), inaugurated an important era for the people as well as for the medical profession of the State of New York. The act was procured by the wise efforts of public-spirited physicians. It reveals the fact that legislators recognize, more fully than ever before, the vast importance of sanitation, and may be led to lessen, as rapidly as public opinion will sustain them in the enforcement of laws, the evils of medical incompetency and other forms of quackery. It also shows that legislators may be guided, in framing and passing laws to regulate the practice of medicine, by medical men when they in wisdom put prejudice and passion down, and accept what is practicable or tentative. If this is true, then it

is not only unpatriotic and unwise, but inexpedient, to sneer at such laws, because under them convictions are not always secured, or because cunning knaves may sometimes escape the just consequences of their misdeeds.

The Medical Society of the County of New York has wisely undertaken to enforce the law of 1880 and the Penal Code, and so far with most beneficent results. Through the efforts of special legal Counsel, beginning during the Presidency of that Society of Dr. A. E. M. Purdy, and extending to the present time, through the Presidency of Dr. Frederick R. Sturgis and Dr. David Webster respectively, the work has been prosecuted. I quote from memoranda furnished by the Counsel of the Society.

“In general terms the work and results have been as follows :

“The United States Medical College, an illegal institution issuing diplomas unlawfully, has, by judgment of the Supreme Court, been deprived of its charter and permanently enjoined and restrained from carrying on business as a medical college.

“Two attempts to upset the court proceedings by legislative enactments have been successfully defeated : the first by judgment of the Supreme

Court (Van Vorst, J.), and the second by the refusal of Governor Cleveland to sign a bill whose only object was to re-establish this and a similar concern in Buffalo.

“In addition to the above, fifty-seven cases, in which official action has been taken, have come under consideration of the Counsel to the Board of Censors ; besides some twenty or more cases where preliminary investigation has resulted in abandonment, on the ground that the facts and available proofs would not warrant prosecution.

“Of the fifty-seven cases officially acted upon the result has been as follows :

“In seven cases physicians of respectability and good standing, who had failed to comply with the law, have, at the request of the Counsel of the Board, or under his advice and direction, complied with the law and registered.

“Most, if not all these cases, were out-of-the-State diplomas which had not been indorsed, and which had to be indorsed and the holder duly registered before he could lawfully practise.

“Five cases are now before the magistrate, the defendants having been arrested, but no conclusion yet reached, and the cases are undisposed of.

“In six cases the defendants were discharged

for want of sufficient evidence. For instance, one De Kraft swore that he never prescribed medicines, only administered, or applied, electricity. The police justice held that this was not 'practising medicine' within the statute.

"Again, in the case of Fanyou, the evidence was that he made a few passes of the hands and prescribed a cup of hot water periodically. Justice Hugh Gardner held him to be a good 'common-sense' physician—not a practitioner under the law—and discharged him.

"In the case of Benedetti, the witness had absconded, and we could not prove the treatment.

"Heintzelman had a 'West Side Medical Society' certificate, and the evidence of treatment doubtful.

"Altenhaim was registered under his original name, but having lawfully changed his name, was the victim of a mistake, and therefore discharged.

"Marini, after having been once *convicted*, was, on a subsequent complaint, discharged on the evidence that Dr. A. Flint, Jr., had indorsed an alleged certificate or license from the University of Naples. He has not, and never had, a diploma; and there is considerable reason to believe that this alleged 'license' is a fraud. Dr. Flint re-

grets that he ever had any thing to do with it ; but acted, as he avers, upon the recommendation of a regular physician.

“ One case was dismissed without trial because the prosecution was not ready ; and the prosecution were not ready because one of the witnesses (the patient) was out of town.

“ In one case the prisoner graduated regularly from one of the city colleges the very day of his arrest ; and his character, on investigation, being found to be good, the prosecution was withdrawn, with the sanction of President Webster and of the three justices holding court.

“ A druggist, who had given some mild preparation to the child of an indigent woman, was reprimanded by Justice Morgan, and on his promise ‘ not to do so any more,’ discharged.

“ In the case of Jost, the officer attempting to serve the warrant found that the “ Dr.” had gone to a higher tribunal to answer for his deeds.

“ The second prosecution of McNair (he having been once convicted and fined) resulted in showing, satisfactorily, a case of mistaken identity. Withdrawn.

“ In the case of Dr. Sansone (an Italian physician), it was found that he had a genuine diploma, but through ignorance of the law had



not had it indorsed. He was permitted by Justice Otterbourg to do so, and register, and was thereupon discharged.

“ Dr. Müller’s case was a similar one, and was treated the same way by the same judge.

“ Seither, a druggist ; Ehlers, a druggist ; and Nicola Ré, an Italian, were, on trial, acquitted. *These are the only cases where, upon a trial, the Society has been beaten on the merits.* The two druggists, in the face of ample testimony to convict, were acquitted by juries who evidently believed in calling druggists instead of physicians. The Italian was acquitted upon the apparently false testimony of another Italian physician.

“ Gustav Fernau, after his arrest, forfeited his bail and absconded. F.W. Johnson did likewise.

“ Richard Johnson, ‘the old slave,’ was a stubborn customer. We convicted him three times, and he was fined and imprisoned, and has now left the city.

“ Abraham E. Cox was once convicted and fined, and again prosecuted, and the result was that he discontinued practice.

“ E. B. Lighthill, a well-known advertiser, was convicted, paid his fine, and left the city.

“ David Dundes was convicted, and retired from practice ; McNair (Jr.), ditto.

“Marini, I am informed, has also left the city after conviction and prosecution.

“John Wesley Grindle and his confederate, Henry Dwyer, were both convicted and fined.

“Henry Cooper was convicted and fined, and took down his sign.

“‘Dr.’ Lake is under indictment and has taken down his sign.

“Richard Flower, who had a ‘blooming Atlantic Sanitarium’ on the S. E. cor. of Fifth Avenue and 39th Street, was convicted and fined, and has left the city.

“James Bryan is under indictment. There are two untried indictments yet pending against Marini.

“‘Dr.’ Bond is under indictment. Adam Claesson was convicted and fined. August F. Frech was twice convicted and fined, and has taken down his sign. Leech, alias ‘Jacobi,’ is under indictment, as are also Fuller and Adams.

“Ruhnberg was convicted and took down his sign. Coggsell absconded. Fulda is under indictment.

“Those noted as under indictment are awaiting their trial.

“(In six of the above cases, Lighthill, Grindle, Dyer, Bryan, Claesson, and Fuller, the *New York Eclectic Medical College* graduated these

men, either while under indictment or after conviction.)

“As a result of this work it will be seen that a very large percentage of the cases resulted in either making the men qualified practitioners, or breaking them up, or driving them from the city.

“In addition to the foregoing, many cases have arisen where carefully and well considered opinions have necessarily been prepared.

“An attempt to repeal the law of 1880 was successfully resisted in the Legislature, and advice has been given to many physicians coming from other States, who, seeing the newspaper accounts of prosecutions, have called upon Counsel voluntarily for advice and guidance.

“These cases are constantly occurring.”

As there may be many of our readers who have not seen the Act of 1880, under which these proceedings were taken, we give it in full. A perusal of the Act and of the memoranda of proceedings under it, will no doubt prepare the way in the minds of competent readers to suggest amendments which would increase its effectiveness in securing the wise purpose for which the law was originally procured.

## Chapter 513.

## AN ACT

Entitled "An Act to regulate the licensing of physicians and surgeons." Passed May 29, 1880, three fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. A person shall not practise physic or surgery within the State unless he is twenty-one years of age, and either has been heretofore authorized so to do, pursuant to the laws in force at the time of his authorization, or is hereafter authorized so to do, as prescribed by chapter seven hundred and forty-six of the laws of eighteen hundred and seventy-two, or by subsequent sections of this Act.

§ 2. Every person now lawfully engaged in the practice of physic and surgery within the State shall, on or before the first day of October, eighteen hundred and eighty, and every person hereafter duly authorized to practise physic and surgery shall, before commencing to practise, register in the clerk's office of the county where he is practising, or intends to commence the practice of physic and surgery, in a book to be kept by said clerk, his name, residence, and place of birth, together with his authority for so practising physic and surgery as prescribed by this Act. The person so registering shall subscribe and verify by oath or affirmation, before a person duly qualified to administer oaths under the laws of the State, an affidavit containing such facts, and whether such authority is by diploma or license, and the date of the same and by whom granted, which, if

wilfully false, shall subject the affiant to conviction and punishment for perjury. The county clerk to receive a fee of twenty-five cents for such registration, to be paid by the person so registering.

§ 3. A person who violates either of the two preceding sections of this Act, or who shall practise physic or surgery under cover of a diploma illegally obtained, shall be deemed to be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars for the first offence, and for each subsequent offence by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty nor more than ninety days, or both. The fine when collected shall be paid, the one-half to the person or corporation making the complaint, the other half into the county treasury.

§ 4. A person coming to the State from without the State may be licensed to practise physic and surgery, or either, within the State in the following manner: If he has a diploma conferring upon him the degree of doctor of medicine, issued by an incorporated university, medical college, or medical school without the State, he shall exhibit the same to the faculty of some incorporated medical college or medical school of this State, with satisfactory evidence of his good moral character, and such other evidence, if any, of his qualifications as a physician or surgeon as said faculty may require. If his diploma and qualifications are approved by them, then they shall indorse said diploma, which shall make it for the purpose of his license to practise medicine and surgery within this State the same as if issued by them. The applicant shall pay to the dean of said faculty the sum of twenty dollars for such examination and indorse-

ment. This indorsed diploma shall authorize him to practise physic and surgery within the State, upon his complying with the provisions of section two of this Act.

§ 5. The degree of doctor of medicine lawfully conferred by any incorporated medical college or university in this State shall be a license to practise physic and surgery within the State, after the person to whom it is granted shall have complied with section two of this Act.

§ 6. Nothing in this Act shall apply to commissioned medical officers of the United States army or navy, or of the United States marine hospital service. Nor shall it apply to any person who has practised medicine and surgery for ten years last past, and who is now pursuing the study of medicine and surgery in any legally incorporated medical college within this State, and who shall graduate from and receive a diploma within two years from the passage of this Act.

§ 7. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

Two reports have been made to the American Academy of Medicine by a special committee consisting of Drs. Richard J. Dunglison and Henry O. Marcy, on the Laws of Medical Practice in the United States and Canada. The last report is under date of October, 1882. I am permitted by the kindness of Dr. Dunglison to quote from it. In twenty-two States and two Territories laws regulating the practice of medicine were enacted previously to October, 1882. The following is the list of the States and



Territories in which such laws have been passed: New Hampshire, Connecticut, New York, New Jersey, Pennsylvania, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Arkansas, Illinois, Missouri, Colorado, Wisconsin, Kentucky, Nebraska, California, and Washington and Wyoming Territories.

The reports show that the rapid drift, so to speak, of legislation, is toward registry laws, a higher standard of medical education, and in the direction of investing mixed health boards—that is, boards made up of legally qualified physicians, State officers, and public-spirited laymen—with power to examine into the character of doctors in the vicinage and the extent to which medical schools confer diplomas honestly. The reports show that these laws are imperfect in themselves, and that in most places they are imperfectly administered, but that they, nevertheless, constitute long-needed and most salutary barriers against reckless and, heretofore, unrestrained medical incompetency and lawless quackery. The adoption of a registry law in Illinois is said to have extruded nearly two thousand quacks from that State alone, who, tramp-like, escaped to other States where they could ply their nefarious traffic without embarrassment.

It is shown that, with scarcely an exception, all the legislation has been accomplished within a very recent period, and that there is an almost universal awakening of the people over the United States to grapple with the evils of quackery and medical incompetency.

One of the secondary, or reflex, and most valuable effects of such popular awakening and legislation, is to encourage existing medical schools to elevate their standards of instruction, and in other ways to reform their methods.

One of the State boards of registry is said to have rejected the diplomas of thirteen separate medical schools, having become satisfied that said schools did not subject their scholars to an adequate curriculum.

Every medical school in the country, however good it may be, is benefited by having its diploma-bearers subjected to a scrutiny and registration. The fact that such boards exist comes to be known among the people, who thus learn to inquire, more than they would formerly have done, into the merits of those to whom they entrust the interests of their own health, and that of those for whom they are responsible. In the face of all those facts, illustrating the evolution of law, it is to be regretted that there are any who, like the editor of the

*Ephemeris*, sneer at legislators or "politicians," as they are loosely called, and affirm that they are so ignorant of the best interests of their constituents, or so easily controlled by quacks, that they may not be trusted to make statutes to defend the people against the evils of unauthorized medical practice.

We are not surprised that such critics advocate the abandonment by incorporated medical societies of the acts of incorporation, and the return to the antique plan of attempting to rule the profession, and through it the public, by codes of ethics drawn from the eighteenth century.

In the *Ephemeris* for May, 1883, pp. 279 and 280, is the following extract from the creed of the gentlemen of that school of "old coders."

"This authorizing and licensing registry law, which, seen now in the light of more recent action, appears as the first public step taken in this no-code movement, levels all inequalities, and ranks the best names in the profession with those qualified for no profession and undeserving of recognition, whose lack of qualifications must be all the more dangerous to the public welfare for being legally authorized and licensed. This class, though legally authorized in a roundabout way through diplomas and

certificates of bodies incorporated under a general law, would never have been legally recognized and licensed but for this registry law, and the harm done by thus recognizing a large number, will far overbalance the good of preventing the registry of a few, or the prosecution of a few who may be so incautious as to register fraudulently.

How it "levels all inequalities," etc., one cannot understand. A registration cannot make character; it only forces the registered to come out into the light and make a public showing of his title to practise medicine. The public will soon determine how far a given claim for the right to practise is a sufficient guarantee of fitness.

We have a registry of voters in the city of New York. A man is no more a Christian or a scientist after registering than he was before. The public, however, has secured a list of those who claim the right to exercise the right of franchise, and students of free institutions and universal suffrage are helped to determine by the results produced by the votes of the registered what efforts should be made to educate the voter to exercise more wisely the privileges which he has. By registering the claimants of the right to practise medicine, we shall soon

know better than we now do the defects of our system of medical education, and be able to exclude from the ranks of qualified or authorized doctors many who now go unchallenged. We shall be able, seeing the defects of the registered as well as the defects of the registrars, to make better and better boards of registry, applying severer tests, and so exercising a strong reflex action upon medical schools. In a government like ours such boards cannot rise above the level of the people, or above the level, if you please, of the medical profession as a whole, but they will certainly grow better with the experience acquired. Especially will this be so, if the best men in the medical profession will, in the exercise of public spirit, come forward to their support and for their amelioration, instead of holding aloof and grumbling.

It is assumed by some that none but the medical profession itself, or the "national medical profession," as they are pleased to call it, can determine who shall wear the badge of a regular doctor. They forget that the medical profession of the United States is not a unit, that it has no corporate existence, has no native power over incorporated medical schools or societies, has no law to administer, and no punitive power to wield. They forget that it is

impossible to throttle freedom of discussion, or to settle great issues by a fiat from a secret tribunal, even though it bear the attractive title of "judicial council." Those who sneer at legislative enactments regulating the practice of medicine are found only among the leaders or partisans of the old proscriptive code.

It will be seen ultimately that the more intelligent of the medical profession of the State are in favor of a Board of Registry, authorized by law to scrutinize the character of claimants for the right to practise medicine, and to apply the force of law, with all the appliances of State police, to deter or punish unlawful practitioners. It is quibbling of a bad and dangerous type to press the distinction between an "authorized" doctor and a "legally qualified" doctor. It goes without saying that laws for regulating the practice of medicine and registering practitioners may be very defective in their scope and operation, and be so administered as to allow some to acquire the legal right to practise who are not competent; and may thus, to a superficial observer, seem to legalize mischief-makers. But the abuse of such doctrine includes the whole range of legislation to prevent offences against the well-being of society, and might be adduced as an argument in favor of the speedy



methods of rude justice administered by vigilance committees and under lynch law.

It applies against the extension of the right of suffrage, and practically claims for a set of self-created aristocrats the divine right to rule their fellows arbitrarily. It applies against all legislation on account of its imperfections ; imperfection springing out of the inevitable limitations of all mere human thought and action. It is the argument of the pessimist against legislators and legislation which classes all the former under the opprobrious but amorphous class of "politicians," and attributes all their acts to selfishness, corruption, and bribery.

It is that phase of pessimism against which we are enlisted, which is nourishing communism by inculcating contempt for law-makers and encouraging guilds or cliques of citizens to organize to defend rights which are not threatened, and to attempt to secure by special sumptuary codes, administered by self-appointed judges, what every man may have through the machinery set in motion by the common code of ethics and by general statutes. It may be asked, Is there, then, nothing for the medical profession to do as a body? Should there not be an American Medical Association made up of representatives from every State and Terri-

tory? We answer that we have nothing to say against the idea of an American Medical Association. That we approve most heartily of the profession of the United States forming a strong, compact representative body. We are not Utopian enough to believe that such a body could exist without organic laws. It must be bound by obligations, and have the inherent right to determine the qualifications of its constituent membership. But to do this in such a manner as to be national, and to continue to be respected and respectable, it must not assume to judge in matters in which it has no prerogative or jurisdiction. It must not venture to dispose of living questions with ruthless repression, or to ostracise those in its membership who within the domain of questions of conscience feel constrained to exercise individualism in holding and advocating opinions. It seems to me that *incorporated* societies within the boundaries of States should have at least three great functions : one to bring out in every possible manner the energy of its members in advancing the science and art of medicine ; a second to educate the people and legislators to embody advancing medical knowledge in State acts for the sanitary benefit of the people and the regulation of the practice of medicine ; and

third, to cultivate the amenities of social intercourse among legally authorized doctors. To accomplish any one of those, and certainly to accomplish them all, great charity must be exercised. Mere sectarianism must be kept down. Truth has nothing to fear at the hand of Error. "Error may be left free if reason is free." In the *Ephemeris* for May we have much quibbling about the difference between a "legally authorized doctor" and a "legally qualified doctor," as though the advocates of the existing code in the State of New York were satisfied with all the provisions of the law of 1880 and did not aspire to any higher tests. The necessity for a special code of ethics in the medical profession of our State has been finally removed by the assumption by the State itself of the duty of protecting the people against medical incompetency and quackery; common ethics are sufficiently well understood to make it easy for members of a liberal profession to know how to behave. The interests of truth and humanity will not suffer if the average doctor possessed of the current title to practise his art is allowed to keep his "own account with his conscience." The allegation of the *Ephemeris* for July, that we wish to do away with all responsibility on the part of one mem-

ber of the profession to the profession as a body, is without a shadow of truth. We only wish to transfer the responsibility to a higher tribunal. We wish to have the members of the profession understand that they must stand or fall in virtue of what they are. We wish the profession to perfect the medical schools and sanitary laws of the State; to punish quackery through State machinery. Pharisaism, or the operation of special prescriptive codes of ethics, will not accomplish these high purposes. Our schools of medicine need enriching with capital, so that they may have adequate buildings and some endowment at least of the chairs of Anatomy, Chemistry, Physiology, and Pathology.

Medical schools are behind other parts of the university system in plant and the facilities for teaching. Heretofore the work has been done almost exclusively by the profession in proprietary schools. It is now high time to bring in public-spirited persons from outside, and to enrich our medical schools with money.

To do that we must have plans for developing our profession and its medical schools which will commend themselves to the liberal and generous, and which lie along the line of that work in the other departments of the university which

has led patrons of sound learning to give labor and money.

The following opinions from the eminent Professors in the Columbia and University Law Schools, explain themselves :

NOTE A.

CONCERNING FREEDOM IN CONSULTATIONS.

MY DEAR DR. AGNEW : I have examined the papers which you submitted to me a few days ago concerning the recent regulation of the State Medical Society of New York governing consultations. The rule, as I understand it, is as follows : "*Rules governing consultations.*—Members of the Medical Society of the State of New York, and of the Medical Societies in affiliation therewith, may meet in consultation legally qualified practitioners of medicine. Emergencies may occur in which all restrictions should, in the judgment of the practitioner, yield to the demands of humanity." I find this section in a "Code of Medical Ethics" laid down by the society for the guidance of the action of its members in matters of morality and conscience. One of the leading divisions of this concerns the relations of physicians to the public, another the rules concerning consultations, while the third division applies to the relations of physicians to each other. All of the points, as far as I can observe, concern moral relations, including the general observance of the rules of kindness, good feeling, and humanity toward all men suffering pain and disease who can be relieved by medical skill and attention, as well as the duties of courtesy and mutual aid toward professional brethren.

In the outset, it must be fairly presumed that medical ethics are but a branch of universal ethics or morality. They are but the application of the general rules of morality to special cases. All intelligent men who have a cultivated moral sense are capable of judging of them. They ought, then, to square with the rules of general morality. Any special medical rule professing to be "ethical," which is based on a violation or restriction of the great rules of morality, is in itself "unethical," opposed to public policy, and fraught with evil and disaster to the non-medical public as well as to physicians themselves.

From this point of view, the rule I have quoted above must be interpreted. There is another cardinal rule of interpretation to be stated. This is, that the whole of the rule of the society must be taken into account. It must be considered with its qualification. Fairly interpreted, the rule has the following prominent points : (1). The members of the State Medical Society may meet in *special cases* in consultation "legally qualified" practitioners of medicine, not members of the society; in fact any and all of that class, notwithstanding general *restrictions* on this subject. (2). The special case referred to is an "emergency." An emergency is a matter of pressing necessity—an unforeseen casualty—a sudden occasion ("Worcester's definition of Emergency"). (3). The object of giving way to the "emergency" is "to yield to the demands of humanity." (See the rule.) Still more, the rules, as I observe, apply equally to physicians and surgeons. All through the code, medical and surgical practice is referred to. Under this rule, the question might arise whether a "legally qualified practitioner of medicine" might call in consultation an eminent surgical practitioner of another school. The question might be as to the direction of a gun-shot wound, whether it extends from below upward, or from above downward. This may be vital to the treatment, and his opinion may be to the last degree important, and so in a thousand other cases where all schools of medicine act in common. The object of the consultation, I repeat, is "the demands of humanity." It is the suffering patient who requires it, and who may have no other succor. (4). The regulation is permissive. No one is required to follow it. If you ask how shall abuse be avoided, the answer is, the physician who is called in consultation must *exercise his own judgment*. To that in the end all questions of ethics must come. Ethical rules are established only to guide the judgment. The great value of the new rule, if it have a value, as I am sure it has, is that it substitutes an elastic for an iron-clad rule. The Medical Society says in substance to the practitioner: We will not place you under a stern rule without any exceptions. We retain the *general rule* by implication. Humanity may demand its relaxation. Whether it does so or not in the special case, we, as a society, have no means of determining; of that we must leave you, the practitioner, in possession of all the particular facts in the case, to be the judge.

Having thus considered the true scope and purport of the rule, the remaining question is, Is it right? Is it ethical? The question, an-



swers itself : Shall a true physician hesitate before any lawful acts when driven to it by the "demands of humanity"? The patient does not exist for the rule of the profession, but the medical profession always and everywhere for the good of the patient. It is *par excellence* the profession which deals with man in a "matter of humanity." Take away from it that element, and you shear from it its royal prerogative. If this rule is not right, then it should be put in this form : "Members of this society shall not consult with legally qualified practitioners of any other society than our own, not even if an emergency arises in which the demands of humanity require it." Can any right-minded physician vote for such a resolution? And yet is not that the position that the opponents of this regulation must take? I should say unhesitatingly that any such ground taken expressly or by implication is contrary to public policy and worthy of public reprobation.

There is another suggestion which may not be out of place. The State Medical Society exercises a right conferred on it by the statutes of the State. It is not a mere voluntary society, but has certain compulsory powers conferred upon it by law. It profits by the exclusion of unqualified persons from practice. When the State authorizes practitioners of other schools to practise medicine, does not courtesy to State authority dictate recognition of their fitness for association? How can the State Medical Society consistently demand public recognition by reason of State legislation, and yet deny it to others who have precisely the same authority?

I cannot but think that the rule that you have brought to my attention is sound and salutary, and worthy of the advancing stage of medical thought and ethical refinement. Let us never sacrifice the demands of humanity to professional etiquette, nor imitate the poor King of Spain, who is reported to have lost his life because, by the laws of a rigorous Spanish ceremonial, no one was at hand who was professionally competent to move his chair from the fire that was slowly gnawing at his vitals.

Yours very respectfully,

THEODORE W. DWIGHT.

COLUMBIA COLLEGE LAW SCHOOL, NEW YORK, April 24, 1882.

—*Medical Record*, May 13, 1882, Vol. 21, No. 19.

## NOTE B.

## THE NEW YORK CODE OF MEDICAL ETHICS IN SOME OF ITS LEGAL ASPECTS.

A revised Code of Medical Ethics was adopted by the Medical Society of the State of New York, in February, 1882, superseding the Code of 1848.

The new Code includes the material provisions of the old one—presented, however, in more terse and succinct language ; but it also contains one rule which is unquestionably new, which its friends regard as a reform in the interests of humanity, and in conformity with the legislation of New York, in relation to medical practice ; but which its opponents, both in New York and in other States of the Union, have assailed as a “disgraceful act,” “in disregard of a custom approved and *sanctified* by the wisdom of ages,” and “a complete surrender to homœopathy.”

The rule thus vehemently assailed, is as follows :

## RULES GOVERNING CONSULTATIONS.

“Members of the Medical Society of the State of New York, and of the Medical Societies in affiliation therewith, may meet in consultation legally qualified practitioners of medicine. Emergencies may occur in which all restrictions should, in the judgment of the practitioner, yield to the demands of humanity.”

It will be seen that there are here, in fact, two rules—both permissive and optional, and in no way peremptory ; the first *allowing* consultations in all cases with legally qualified practitioners ; the second *allowing* consultations in cases of emergency without reference to qualification.

The objections to this rule, stated in a more specific and less passionate way, are as follows :

1. The rule does not fairly express the opinion of the majority of the members of the County Medical Societies, and should be reconsidered by the State Medical Society at its next annual meeting, and at such meeting the delegates of the County Medical Societies should be required to vote as they may be *instructed* by the County Societies.

2. The rule, in principle, involves an abrogation of all the other rules of the Code of Ethics, because there is no more reason why the

restriction upon consultation should be removed than various other restrictions which it contains, such as those upon making and using secret nostrums, owning patent medicines, and publishing cures ; and the Society has no more right to allow its members to consult with practitioners whom it does not approve, although legally qualified, than to allow them to practise quackery.

The issue, therefore, we are told, is Code or no Code ; and the question is, Shall the physician be left to the unwritten law of conscience, professional honor, and humanity, or be governed by statutes ?

The advocates of the new rule contend :

1. It is not their purpose to do away with the written Code of Ethics. An objection to one restriction is not an objection to all restrictions. So far from opposing Codes, the new rule is part of the Code of which they have furthered the passage. And the question in every case, as to what is to be left to the sound discretion, conscience, and honor of the practitioner, and what is to be governed by strict written rule, must be determined by the nature and circumstances of the case.

2. An important circumstance, controlling the questions of consultations, is the fact that the Legislature has recognized a large class of practitioners, as legally qualified, whom the old rule would not allow members of the Society to consult with ; and it is better to conform to the legislation of the State, and seek to guide and enlighten it, than to resist or disregard it.

3. In view of the laws establishing the State and County Medical Societies, and the powers conferred upon them, including the power to make by-laws, and enforce them by expulsion, the old rule, restricting consultations, is of doubtful validity, and could not be enforced by the expulsion of a member disregarding it.

4. The new rule is not only in conformity with the law and in harmony with the legislation of the State, but is called for by every consideration of humanity, and the protection and safety of the patient for whom the profession exists, and whose need, if he is in the hands of some practitioner whose theory is false and practice dangerous, is therefore the greater, and calls the more imperatively for the true science and skill of the enlightened physician.

5. The old rule, considered as the act of an incorporated society, is in the nature of an act of combination, to prevent the community from receiving, by prohibiting its members from rendering, medical

services necessary to the public health, and is therefore "injurious to the public health," and as such its validity is more than doubtful, both at common law and under our statute. (Penal Code, § 168.)

The controversy is one of the gravest concern and of the deepest interest, not only to the members of the medical profession, but the community at large—the "patient" public, who need their services. And it involves the consideration of the powers of the Legislature to regulate and control the practice of medicine, the organization and powers of the State and County Medical Societies, the relation of the County to the State Societies, the force and sanction of their rules of ethics as by-laws of the Society, the interest and progress of medical science, and the right of the community to require the best skill and science of a profession which owes its franchises to the law, without interference by any combination acting under the forms of law.

A reference to the legislation of this State upon the subject presents many interesting points, and suggests some considerations which have a direct bearing upon the controversy.

Legislation, in relation to the practice of medicine, began in New York in 1760. An act of June 10th, in that year, recites that "many ignorant and unskilful persons" take upon themselves to administer physic and practise surgery in the city of New York, "to the endangering of the *lives* and *limbs* of the patients," and it requires an examination and certificate of approval of one of his Majesty's Council, the Judges of the Supreme Court, the Attorney-General, and the Mayor, or three or more of them, as qualification for practice in the *City*.

This "Act to regulate the practice of physic and surgery in the *City* of New York was local, and was followed, in 1797, by an act of March 23d, which repealed it, and regulated the practice of physic and surgery in the whole State; and provided that no person after October 1, 1798, should practise medicine without three years' study, if the graduate of a college, and four years' study, if not a graduate of a college, and without a certificate of such study endorsed by one of the Justices of the Supreme Court, a Master in Chancery, or one of the Judges of the Common Pleas; but '*in an emergency*,' any person not authorized to practise might administer medicine and perform surgical operations," without compensation.

Four years after the adoption of this law, an act of April 4, 1801, gave to a degree of Bachelor or Doctor of Medicine, granted by "any

college or university," the effect of the certificate as a license to practise.

The right of the Legislature thus exercised in Colonial times, and under the State Constitution, to regulate the practice of medicine, and to fix the *status* of the "qualified practitioner," has never been questioned.

It was in 1806, by act of April 4th, that the first step was taken toward an organization of the profession, by creating corporate County Societies and a corporate State Society. That act, in its substance and in most of its details, contains the system now in force, as it was embodied with a few not very material modifications in the revised law of 1813.

The preamble of both acts recites that "well-regulated Medical Societies have been found to contribute to the diffusion of true science, and particularly to the knowledge of the healing art."

A Medical Society is incorporated in each county, consisting of the physicians of the county, "authorized to practise," and a general society, to be known as the Medical Society of the State of New York, is also incorporated, consisting of members to be chosen by ballot in each County Society, equal in number to the number of members of Assembly from the county, of "permanent" members to be chosen by the State Society (according to the provisions of a subsequent act) in the proportion of one member to eight "delegates," and of "delegates" from the medical colleges. By an act of later date the members elected by the County Societies are divided into four classes, one of which goes out of office annually.

The revised law of April 10, 1813, has been followed by statute after statute, altering, modifying, "enlarging, and restraining," the rules of law regulating medical practice, the organization of Medical Societies, and the status of the "qualified practitioner."

The precise result of this legislation it is not, in all cases, easy to determine; but it is important to consider the bearing of these laws upon two points:

1. The requisites for admission as a "qualified practitioner."
2. The organization of the State and County Societies, their relation to each other, and the legislative power of the State Society.

An act having an important bearing on both these points, which brought into existence a new and entirely distinct class of State and County Medical Societies, and gave express legislative recognition to a distinct system of medical "therapeutics," should first be noticed.



By Chapter 384, of the laws of 1857, County *Homœopathic* Medical Societies were authorized, "with all the powers, rights, and privileges, and subject to all the duties and responsibilities now by law given to, or imposed upon, a County Medical Society organized under the act of 1813."

#### THE "LEGALLY QUALIFIED PRACTITIONER."

The act of 1813 provided for the examination of students by boards of "Censors," appointed by the Medical Societies; and made the diploma granted by them a license to practise. A provision of the act prohibiting practice without such diploma (Sec. 12) was repealed in 1828.

The revised statutes of 1830 introduced some important provisions, one of which required *every* practising physician to become a member of the County Society of his county; and if he failed to do so, his license was forfeited.

Subsequent acts gave to the diplomas of medical colleges and chartered schools "the effect of licenses to practise." Among the institutions thus authorized to legally "qualify" the practitioner, are the Homœopathic and Eclectic colleges.

In 1872 an important act, of May 16th, authorized the Regents of the University to appoint one or more boards of examiners, each to consist of seven licensed practitioners, on whose report the Chancellor is empowered to grant the degree of Doctor of Medicine, which is declared to be a "license to practise."

The act prescribes the subjects of examination: anatomy, physiology, *materia medica*, pathology, histology, clinical medicine, chemistry, surgery, midwifery, "*and in therapeutics according to EACH of the systems of practice represented by the several medical Societies of this State.*"

The last clause was amended in 1881 (Chap. 679) by allowing an examination in "the therapeutics of *that one* of the systems of practice represented in the several incorporated State *Medical Societies of this State*, which the candidate may elect."

It is not understood that the change was made in consequence of any rule of medical ethics, forbidding licensed practitioners from acting as members of a board of examiners required to examine candidates in *both* systems of therapeutics, or that they are *now* forbidden by medical ethics to serve on boards which examine in *either* system. as the candidate may elect.



In 1874 every practitioner, not a licentiate or graduate of some "Medical Society" or "chartered school," was required and "commanded" by the act (Chap. 436) of that year to obtain a certificate from "the Censors of some *one* of the several Medical Societies of the State."

But this and all other rules regulating admission to medical practice seem to be merged in, or superseded by, the provisions of the act of 1880 (Chap. 513), which, if rightly understood, does away with the old system of licenses by State and County Societies and membership of those societies, as requirements, and recognizes two requisites only: 1. A degree of Doctor of Medicine from the Regents of the University, or "any incorporated medical college or university"; 2. Registration in the County Clerk's office.

It may be assumed that the subjects of examination in all medical colleges are the same as those prescribed for Regents' examinations, except that, in Eclectic schools, all systems of therapeutics are allowed. The act of 1882 must be taken as the latest and a most authoritative legislative recognition of *all* practitioners who have a competent knowledge of anatomy, physiology, *materia medica*, chemistry, surgery, and midwifery, and therapeutics, as *legally qualified*, and *as not incompetent, because on the one subject of therapeutics they adhere to one system, and not to another.*

The question, whether a rule of the Code of Medical Ethics of the State Medical Society, which allows consultations with duly qualified practitioners, should be rescinded, and an old rule revived which would prevent consultations with a legally qualified practitioner, simply because he adhered to another system of therapeutics, leads to several interesting inquiries.

What is the Code of Ethics? What is the power of the State Society to enact one, or to legislate on any subject? What are the relations of the County Society to the State Society?

The State Society, and each County Society, are *distinct corporations*, each with power to acquire and hold property, each with an organization of its own. The State Society is composed of certain permanent members, whom it selects in a certain proportion to the other members, and of members elected periodically. The act of 1813 speaks of them as members, *not delegates*. The State Society is not so much a representative body as a distinct and corporate board of control. The suggestion that the members elected by the County Societies must vote as *instructed* by them, is untenable. A doubtful

principle in any case, it would convert the State Society into a *federal* organization, and would, in effect, require the members to vote *by counties*. In this way rules might be adopted which were disapproved of by a large majority of the practitioners of the whole State, belonging to the County Societies.

Moreover, who, it may be asked, are to instruct the *permanent* members?

*Instruction* makes the delegate a mere messenger, to carry the conclusions of the County to the State Society. But the members of the State Society are corporators of a distinct body, and go to its meetings to form, receive, and adopt conclusions, as the result of views gathered from all sections.

But the statutes are conclusive on this point.

They require that, in ALL cases, the rules and regulations of the County Medical Societies shall receive the *Sanction of the State Medical Societies*, and the act of 1866 (Chap. 445) applies this restriction to the Homœopathic County Societies as well. Now, if the County Societies may instruct the members they send to the State Society, a majority of the counties could always control the State Society, which would be its mere creature and mouth-piece; whereas, the act of 1813 in terms declares that the "by-laws, rules, and regulations" of the County Societies shall not be "repugnant" to those of the State Society.

The rules of the Code of Ethics are *by-laws*. Their force and effect are the force and effect they have as *by-laws*. The authority to adopt the old rule and the new rule of consultations, must be found in the power given by statute to adopt by-laws and rules. The act of 1813 and the act of 1866 are explicit in requiring that the by-laws, rules, and regulations of the State Society shall not be "inconsistent" with the *laws of the State*. There may be an "*inconsistency*" which is not a direct violation of a law; but it is believed that the old rule is contrary to both the spirit and letter of the law, as it is contrary to the dictates of a broad and true humanity and the interests of medical science.

It is not consistent with the *letter* of the statutes which prescribe the qualifications of practitioners. It says, in effect, that the employment of physicians whom the law has sent into the community and pronounced qualified, thereby inducing the ignorant and the unwary to entrust them with their lives, shall be punished by deprivation of all benefit from the counsels of enlightened physicians.

Will the law allow patients to be *punished* for employing those the law pronounces qualified?

But there is another consideration, equally serious :

The rule in question is the action of an organized body of men. It is the act of a combination. The men thus combining are considered by many—and consider themselves—the most competent practitioners, the *only* fully-qualified practitioners of the State. By adopting this rule, they *combine* to deprive the community of the best advice to be had in cases of sickness. Such a combination is against common law, and the provisions of statute as well. (Penal Code, § 168.) It is a *conspiracy* against the “public health.”

In a case which came before the Supreme Court, in 1857, Judge Marvin decided that a resolution of the Medical Society of Erie County, fixing a tariff of fees to be charged for services to be performed for the County, and prohibiting any physician from accepting lower rates, was *inconsistent* with the laws of the State, because against public policy, and in the nature of a combination to deprive the County of medical services, and to compel a certain compensation. (*The People ex rel. Gray v. Med. Soc. of Erie Co.*, 24 B., 570.)

Such a resolution, or by-law, could only be enforced by expulsion. Expulsion is *disfranchisement*—that is, deprivation of membership of a society, a connection with which is a valuable privilege. And a qualified physician is to be disfranchised for giving his advice in a critical case, because another physician is in attendance whose employment makes the case *more critical*. (*People ex rel. Bartlett v. Erie Co. Med. Soc.*, 32 N. Y., 187.)

The old rule is not *humane*. The reasons for and against any proposition are to be *weighed* rather than counted. Admit that the progress of true medical science by discountenancing and so extinguishing error, and the consequent *ultimate* good of society, are weighty considerations. Yet they are not *paramount*—they are not controlling. The paramount, the controlling, consideration is the present need of the sick and afflicted of 1883, whom the laws in force in 1883 surround with various classes of “qualified practitioners.”

But is it the fact that true science is best promoted by keeping aloof from those who adhere to false science? It is by conference, by conflict, that truth is brought out and made to reach the minds of those who have been misled. And how and where can a true system of therapeutics be better taught than at the bedside of the patient?

If it be true that error may be tolerated if truth is left free to combat it, then truth should have every possible opportunity afforded it to contend with error; and "qualified practitioners" should seek, rather than avoid, consultations together, that truth may triumph and error die. It is wholly immaterial that the attending physician is not obliged to follow the directions of the consulting physician. If he fail to do so, the result will furnish the most conclusive and impressive test to distinguish true science from false.

Nor need the enlightened practitioner deem the association degrading. One who, during three wonderful years, went about healing the sick and relieving the afflicted, felt it no indignity that one poor sufferer touched the border of his garment, "*who had spent all her living upon physicians and could not be healed of any.*" And this fact seems to be mentioned as one reason more why she should be relieved, and not as any reason why she should not.

But the dignity of the medical profession and the interests of medical science are not the paramount consideration: the sufferings and anguish and peril of the sick and afflicted of to-day *are* the paramount consideration and control this controversy.

And we have here the true answer to the argument, that to do away with the old rule against consultations involves the repeal of *all* restrictions, that the controversy involves the policy of any Code of Ethics.

It might be a sufficient answer to this "argument" to say that consistency does not require that he who favors the repeal of one restriction should favor the repeal of all. We are told the Code does not allow physicians to own patents for medicines or instruments, to advertise or to publish cures. No one proposes to remove these restrictions. But does the Code prohibit *consultations with physicians who advertise or publish cures*? If it contained *such* restrictions, there would be more force in the analogy. As it is, the argument against the old rule must be considered as directed against *this* one restriction, and not against all restrictions; and against this restriction, because even if the dignity of the profession were compromised and the progress of medical science impeded by maintaining the prohibition (although neither consequence, it is believed, will follow the new rule), yet paramount above these and *all* other considerations is the Health of the community. SALUS POPULI, SUPREMA LEX.

D. R. JAKES,

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## REQUIESCAT IN PACE.

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The principles or notions of Hahnemann were as follows: The office of the physician is to remove disease. Of the latter, the symptoms only are perceptible. Internal changes cannot be recognized. They are mostly the results of allopathic treatment. To make or attend post-mortem examinations is useless. The disease is removed with the removal of the symptoms. Medicines have their symptoms, like diseases. What they can do, must be studied in the healthy. The treatment of the "old school," "*contraria contrarius*" may remove symptoms, but they return and become incurable. The dogma of "*similia similibus*" is the only law of treatment. Its value and efficiency compare with "old school" medicine as day with night. Medicine produces disease. The natural disease becomes extinct by the effect of the similar and more powerful one produced by medicine. Thus the fear of the roar of cannon in the heart of the soldier is



removed by the roar of drumming. Acute disease results from telluric and atmospheric influences, etc.; also from latent "psora." Chronic disease, from allopathic medicines, syphilis, "condyloma disease," and "psora." Their symptoms must be learned principally from the report of the patient, which must not be interrupted. The medicinal agent which is to cure a disease is that which produces, when given in sufficient dose, a disease similar to that which is to be healed. The effects of an experimental (large) dose are very numerous; they are recorded after a single dose, from the report of the person experimented upon, for days, weeks, and months. Some of the drugs have one thousand or two thousand symptoms. The effects of a medicine are either primary or secondary. The first, is the one wanted. The latter must be avoided. Impairment is sometimes seen at first; the more rarely, the smaller the dose. The medicine must be given but once every few days or weeks. But one medicine must be given at a time. When a remedy is found not to be quite appropriate after some time, another must be selected. The effect of the medicine is dynamic. The smaller the dose the greater the dynamic effect.

Shaking and diluting in a certain manner, in-



crease the effect. Only potencies are homœopathic remedies. • Neither senses nor chemistry must be capable of discovering any thing medicinal in the medicine to be administered. Every thing is cured by homœopathy except the moribund condition, old age, and the loss of a vital part.

The *Medical News* asserts that homœopathy “has been a thorn and pitfall in the way of progress.” That is in direct contradiction to the history of medical science. Homœopathy has neither aided nor obstructed, the progress of medicine. It never claimed to revolutionize or teach any thing, but medicinal therapeutics. Its assumption, that disease was something foreign to the organism (of which the latter could be delivered by some new enemy endowed with similar properties), was so contrary to the medical mind, waking up to the conception and definition of disease as a complex of symptoms depending on changed conditions, that it never, had the slightest influence, on the labors of the men who shaped the fate of medical science during this century. It is true, that homœopathic practitioners had, and have, “a highly respectable and intelligent following” (P. E. Chase, on medical legislation, in the Proceedings of the

Medical Society of King's County), but it is not equally true that it was "deeply seated prejudice" which has "caused the non-recognition of our homœopathic and eclectic brethren, our fellow-practitioners of different creeds." That recognition need not be "withheld" from the followers of Hahnemann; it is an impossibility on the part of sane men, and no "prejudice" against a therapeutical dogma based on Paracelsus and caprice. "Only potencies are homœopathic medicines." "I recognize nobody as my follower but him who gives medicines in such small doses as to preclude the perception of any thing medicinal in them by means of either senses or chemistry." "The pellets may be held near the young infant when asleep." "Gliding over the patient with the hand will cure him; but the manipulation must be done with the firm intention of rendering as much good with it as possible, for its power is in the benevolent will of the manipulator." Such Hahnemannian axioms, are so preposterous, that nobody can think seriously of the possibility of recognizing them even for the purpose of controverting them. Indeed, then there was no need of contesting or contradicting on the part of legitimate medicine. Within very few years, his own disciples turned against Hahnemann. Rau declared potentiation

by dilution, to be nonsense. Soon afterward, Hirschel complained of the "intentional or unintentional ignorance, in regard to the historical development of homœopathy, and the *changes* it had undergone *since* Hahnemann, as being causes of the prejudices it had to encounter."

The changes which have taken place are not developments. In the case of Brownianism and Broussaisism we can speak of development, for they left something tangible behind, and gave rise to fertile investigations and useful results. But the development of homœopathy is a gradual return of consciousness, and the dropping of revealed articles of faith, one by one. Pathology had never been taught by Hahnemann, except that disease was an entity foreign to the organism, that acute disease resulted from telluric and atmospheric, other influences, and also latent psora; and chronic disease, either from the effect of allopathic remedies, or syphilis, or "condyloma disease," or "psora." Of the rank and file of homœopaths, no outsider can have such a poor opinion, as to believe that they ever bent their common-sense to accept such wantonness. It would be easy to prove all this at the hands of homœopathic literature, through the last five, or even six decennia. But this is not to be a history,

only a sketch. What, however, has become of homœopathy, is best shown by the teaching and writing of prominent homœopaths in modern times.

Says Dr. Wilde, Vice-Pres. of the British Hom. Med. So. :

“ Although many believe that the action of the infinitesimal in nature can be demonstrated, its use in medicine is practically, by a large number in this country, all but abandoned.”

Med. Investigator, of 1876, 9th sec. in Encycl. Brit., 12th vol., has the following sentence :

“ How many claiming to be homœopaths are daily disregarding the law of *similia* ! It is getting to be quite a rare thing, to hear of a homœopathic practitioner conducting a serious case from beginning to end, without using such as cathartics, sudorifics, diuretics, etc., in direct opposition to our law ; not only are these drugs used in this way, but there are some also who go so far as to say that they cannot be dispensed with.”

In our own city, Dr. Dowling (*N. Am. Rev.*, June, 1882), who calls himself a homœopath, says as follows : “ Rational aids to therapeutic measures are not discarded by the homœopath. He does, indeed, exclusively follow the homœopathic law within the *field to*

*which it is applicable*, but mechanical and chemical conditions arise, requiring mechanical and chemical remedies as well as palliatives."

Thus the *similia similibus* rule, is claimed by him for those cases *to which it is applicable*. It must be left to the individual observer of an individual case, to decide whether this applicability has arisen. Further, Dr. Dowling, a teacher in what is called a homœopathic college, does not believe in the effect of infinitesimal doses; he uses "drugs varying from crude tinctures to very high dilutions." My belief, that he generally prefers the former to the latter, is not shaken by what he claims as his "invariable rule," viz., "that the *smallest possible* quantity of medicine must be administered to accomplish the desired result." He discards Hahnemann, who designated all who ever availed themselves of any but infinitesimal doses as bastard homœopaths and heretics, and who insisted upon the uselessness of a medicine in which chemistry or physics could ever find the slightest trace of the original material, in the following words: "The size of the dose, whether it be tincture or a fractional preparation, so long as it is sufficiently *small not to produce* the physiological effect of the drug, has nothing to do with its homœopathicity." "So it be

administered because it produces in the healthy similar symptoms to those evidenced in the patient, it matters not whether it be tincture or high dilution, it is homœopathy." You notice that the Hahnemannian practice is entirely disregarded. The provings of the latter were with large doses ; his medicinal doses were the spiritualized dilutions. With Dr. Dowling the provings and the doses are equal, or nearly so. And his doses are by no means controlled by any fixed law, inasmuch as he claims that " the size will depend on individual experience and preference."

According to a newspaper (*N. Y. Times*) reporter, Dr. Wm. T. Helmuth said but lately that homœopathy does not consist in the dose of medicine. You may give a bucketful to one man and a smell to another, provided you adhere to the law: *similia similibus curantur*. " But while I believe the truth of this law, I do not believe it the only way in which medicines may act. There may be a chemical way, or a mechanical way, as well as a dynamical way."

Dr. John C. Minor (*N. Y. Med. Times*, May, 1883,) expresses himself as follows :

" Believing as I do that the formula *similia similibus curantur* forms the best general guide in the selection of remedies, I do not recognize



it as a law, nor follow it as an exclusive method, but exercise the right belonging to every educated physician, to make practical use of any established principle in medical science, and to employ any facts in therapeutics that are founded on experiments and confirmed by experience, so far as in my judgment they may tend to promote the welfare of those under my professional care."

Dr. Maylerides ("On the Homœopathy of To-day," Berlin, 1882,) says, "that in spite of persecution, slander, and ridicule, homœopathy has outlived the transmutations of several medical systems." In what way homœopathy has outlived medical systems, the following quotations from the book will illustrate. My readers will notice, that it is itself which has been outlived by homœopathy. He says :

"In Hahnemann's assertions there is much speculative philosophy, and there are many dicta without actual proofs.

*Similia similibus* is a rule, a principle in, but not, as Hahnemann says, and many with him even to-day, *the law of* therapeutics. The formula is not an appropriate one, for there is no universal therapeutical method for the sum of human sufferings.

Hahnemann was too apodictic. He gave a

bad example of fanaticism, demanded absolute faith, and obedience,—and changed his views very often.

Homœopathy has not discovered the stone of the philosophers.

In regard to the importance and meaning of the natural and inherent tendency to spontaneous recovery (“*Natur heilkraft*”), which Hahnemann did not recognize at all, we hold different opinions altogether. This much is certain, that homœopathy impedes less than other methods of treatment. The younger generation is given to more pathological thinking.

The art of diagnosis stands highest in the estimation of homœopaths.

Whatever is not proven by experiment or mathematics, cannot claim to be recognized as a law in science.

Physiological treatment includes tracheotomy, antisepsis, bathing, morphine, chloroform, both internally and subcutaneously.

Matter and force have a certain relation to each other. Infinitesimal dilutions must not be recognized as justifiable. Iodide of potassium, quinia, phosphorus, and opium are not available in such dilutions. Away with mysticism, and therefore with “*potentiation*.”

We have the “*similia similibus*” rule, but do not recognize its definition as given by Hahnemann. It is ingenious but not proven. In part it is antiquated ; we are not responsible for it ; his “*organon*” is no Bible. We are homœopaths, but no Hahnemannians. The *similia similibus* rule is to serve us, but we must not be its slaves.”

In a presidential address before the New York Medico-Chirurgical Society, Dr. E. P. Fowler arrives at the following conclusions :

“ 1st. That in justice to its originator, the term ‘*homœopathy*’ cannot be used in any other sense than that which he explicitly indicated ; and no one has a right to demand or expect that the general profession or the public, shall attach to it any other than the correct, etymological meaning, which its learned author himself did.

“ 2d. That the term ‘*homœopathy*’ does not, in any degree, contain the idea of a system for the selection of medicines ; it simply contains the theorem that an existing disease must be cured by the introduction of another disease. The selection of the remedy is a corollary, and comes under another head.

“ 3d. That any doctrine teaching that diseases and the actions of drugs or poisons are abstract

entities or non-entities belongs to the mythology or fairy tales of medical history, far away from the known facts of physiology.

“4th. That the theory contained in the term is not to any appreciable extent entertained at the present day ; that it *does misrepresent* the mass of those who allow it to be used to distinguish their belief or practice ; and that a proper regard for a correct appreciation of their intelligence by the public, and of honesty in themselves, demands that *the term be put away in the garret, as worn-out medical furniture*, which has no fitting space in the edifice of real science.”

When I said, that the changes which have taken place in homœopathy consisted in dropping one article of faith after another, I meant to express no reproach. I was simply stating the fact that no two decennia of homœopathy look alike. From one such period to another the homœopathic literature becomes less credulous, less apodictic, more medical. It is true that amongst the first followers of Hahnemann there were men of education and learning. Their position was justified by and resulted from the insufficiency of the therapeutics of the time. The incompetency of what claimed to be science in regard to the healing of the sick drove the enthusiasts to join the flag of the rebel. But

in and at the same time that legitimate service developed, homœopathy was embraced less by medical men than by the public as a new faith, a promising sect. In Europe, but few talented men, and still fewer with a name known outside their city or village, are still upholding the old flag of homœopathy, such as it was, or such as it is said to have become. In our country the case is different. Hardly known by name forty years ago, "homœopathy" has developed into a social power. Its colleges are numerous, its practitioners are counted by the thousands. But the homœopathy introduced into the United States was perhaps never, even at that time, Hahnemannism pure and unadulterated. The men who to-day, claim absolute truth and validity for all of the dicta of the new Prophet, are surely but few. The class of men who nowadays are best known in the ranks of the homœopaths, are those who are more distant from Hahnemannism than any of the rest. Their talents and studies have been too many to be imprisoned within a sect. How many of them would have been glad to renounce their sectarian name if they had been permitted to do so, cannot be told at present. If there will be no more battle-cries of "Crucify!" there will be many more men who formerly had to be called

homœopathists, and called themselves so by habit and coercion, who will be satisfied with the honorable name of physician.

All of those men who proclaim their independence of Hahnemannian doctrines, and discard even the name of homœopathy, are still classed as homœopathists. By whom? By us. They *have* been so ; they may have been. They claim they are *no longer*. *We* claim they are. What a ridiculous position for us, not for them. All *they* want is to be let alone, in their progress toward medical science ; *we* tell them they are outside, and there is no redemption for them. It is we who insist upon the persistence of their sectarian orthodoxy, and who are doing the same we see the public doing constantly. For it is the public which is more homœopathic than their “ homœopathic ” doctors. The actual fact is this : that these men discard their sectarian title. The Homœopathic Medical Society of Northern New York, dropped its homœopathic denomination years ago. Members of homœopathic associations leave them and seek admission into medical societies. The Homœopathic Medical Society of Massachusetts “ demands absolute liberty in service, and requires of its applicants for membership no creed or confession of belief.” The *New York Medical Times*, of



February, 1882, proclaims: "We are no more homœopathists and nothing more, than our opponents are allopaths and nothing more," and probably there are in New York City not twenty signs with homœopathic physician inscribed on them to-day, compared with the two hundred encountered twenty years ago.

But we are told, there are still homœopathists of the genuine Hahnemannian type, and that we must have laws to brand them as such. We are also told, that there are doctors who, while not practising homœopathy, still call themselves by that five-syllabled name,<sup>1</sup> only because the public has faith in "homœopathy," and wants to be treated infinitesimally and similia similibus; and that they are frauds and must be put down. If all that be true, you have, or may have, these classes of homœopathic doctors. First, the Hahnemannians, a small number, honest in their

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<sup>1</sup> It is unfortunate that such men should have a reason to claim for their way of "doing business," such high authority as that of Walter Y. Cowe, M.D., who closes a paper read before the Homœopathic Medical Society of New York County, March 14, 1883, with the following remarks: "We cannot interdict nor hinder any man, in any case, from employing any agent, whose use—even if it be allopathic and routine—is to him individually less difficult of prescription, and to his mind more sure, safe, and quick, than any homœopathic prescription he then and there could make. But now, shall we deny to this man the name of homœopathist? If he believe in the homœopathic law, I do not believe we can. However often he lapse from making a homœopathic prescription, so he believe the law, and like every one *believing*, make his honest endeavor, comparatively feeble though it may be, he is a homœopathist, and this name he may bear until the vast bulk of his profession have come to his belief."

idiocy ; if you wish to treat them courteously, call them fossils. Second, frauds—those who practise on the ignorance and fanaticism of the spinster persuasion.<sup>1</sup> Third, doctors who have been educated as Hahnemannians, and have worked themselves out of their doctrines by study and intelligence ; and those who have been, or are, the pupils of the latter. Certainly we do not mean to ostracise them, for the greatest joy should be ever over the sinners who return. And the other classes, the fossils and frauds ?

We have raised them into the dignified place of real adversaries, from whom we deem proper to protect ourselves as if they were our equals. We have thrown up barriers between them and us, and thus given them a standing. We have insisted upon their being unscientific when experimental science was in its infancy, and we had very little to boast of ourselves. We have complained they made a trade of the profession, and by repeating this reproach again and again, we have made their trade successful.

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<sup>1</sup> “ Why homœopathy should have so much popular currency in this country as compared with the lands of its birth, or with Great Britain, is a curious question. It has been attributed to the state of medical education, but it might be found, I suspect, to be in intimate relations with another very interesting matter too delicate for me to meddle with here, namely, the potential influence in our community of the imaginative sex, and its psycho-biological leaders and followers.”—OLIVER WENDELL HOLMES in *Boston Medical Journal*.

We have enlisted the sympathy of the press and public in their favor, and improved their chances of recognition, by proclaiming loudly our objections to it. Thus we have both injured the professional dignity and influence, and harmed the public. For it is our fault, if a large part of the public went astray. Knowledge on medical matters, it has none, cannot have it, in the present condition of school instruction and general education. Laymen judge of medical matters, with the intellectual means at their disposal, that is, business experience and "common-sense," which, when not matured by knowledge, is generally uncommon nonsense.

In order to destroy homœopathy, and spoil the public's taste for it, we have commenced at the wrong end. Instead of improving ourselves we have excommunicated those who threw systematic medicine overboard; and nowadays, when we meet men who in a genial and gentlemanly manner proclaim their readiness to join us, we refuse to let them do it in their own way, and insist upon their professing loudly that they have always walked in darkness and lived in perversity. We have looked in the wrong direction for improvement. We have been taught to point our Pharisee's finger at the men

who, by malice, ignorance, or whim, wanted to stay behind or outside, instead of letting them severely alone and giving them time to return to their senses, and instead of minding our own affairs. Meanwhile, we, in America, have but little improved the methods of educating young men for the profession. Unless the standard of the general practitioner is high, neither the educated nor the uneducated classes of society will know how to distinguish him from his quack neighbor. It is not a few prominent men who are known over the States, and the world, who give a status to the profession, but the thousands of general practitioners who mingle with the masses in city and country. Meanwhile, we have to admit the remarkable fact, that men connected with medical schools, emphatically denying the necessity of a preliminary general education, and promising the shortest possible courses of instruction, before awarding diplomas, are among the main posers in behalf of the "Code of Ethics."

And what about consultations? Nobody compels you. You cannot or do not care to consult with a fossil; you do not wish to consult with a fraud, no matter on what side of the fence you find him. In fact, nobody compels you to consult with the frauds amongst the so-

called regulars, who bow to the old family nurse's teething diagnosis in a case of meningitis or pneumonia, or who sustain the fashionable "malaria" diagnosis of high and low, rich and poor, and the still more fashionable "sewer-gas" etiology, in all cases of diagnosable, but perhaps, not diagnosticated cases, and why? because it is the diagnosis and the etiology of their—what do they call them?—"patrons." You need not consult even with *them*, *but* you *may*, and generally you *will*. For it is considered quite legitimate to consult with all of them, even with those professedly ignorant. And still, therapeutics has risen (as H. C. Wood so aptly expresses it) "from the position of an empirical art to the dignity of approved science" in our times. For the past we are not responsible, and rejoice in the fact of being able to resort to the results of experimental therapeutics in the treatment of the sick, willing to admit that the individual may be ignorant; not ready, however, to join with A. T. Speer (of Ohio), who, even in a presidential address delivered but lately, claims to be "almost as ignorant of the action of medicine upon disease, as we were one hundred years ago."

We are told we must continue to fight wind-

mills. There is no adversary left, but we are told to fight on. By fighting, where there were no enemies, we succeeded in making them. We are also told that laws of forty years ago are to be our laws, because our dead fathers, some of whom are, however, still living, thought them good at that period.

We, the citizens of the State and country, send our delegates to Albany and Washington every year for the express purpose of giving new laws and mending and abolishing old ones, and when, by some ludicrous mistake, an old penal code was lately fastened upon the land, ridicule and disgust rendered it ineffectual within a single fortnight. But the physicians of city and county are advised that changed times and circumstances do not change the necessities of the professional man. He is expected to live in the code and coat fashionable and proper when he was born.



# IS IT A PROFESSION OR A TRADE?

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The organization and direction of the medical profession exist as a part of the police of all civilized communities. Governments endow physicians with certain class privileges, and exact of them certain responsibilities. Physicians look upon their peculiar rights as desirable, and consider themselves bound to return an equivalent of professional services, to be measured only by the limits of their abilities.

Underlying these relations are, the belief upon the part of the people in the beneficence of the healing art, and the willingness of individuals to devote their lives to its pursuit; also, the recognition upon the part of both, that they who wait at the altar are partakers with the altar. The medical corps of a standing army may be cited as an instance of the fully developed relations of the profession as a social factor. The relations of the surgeon to the army is one of pure utility. The government exacts most rigid requirements of candidates

for these positions, and when admitted holds them accountable for continuous increase in efficiency ; it exacts most arduous services, and in return endows the corps with distinguished honors and emoluments.

The relations existing between the profession and the people of this State exhibit the germs which reach their full development in the relations of the medical corps of our regular army.

The medical profession of this State, as an organized factor of society, dates from April 4, 1806. On that day the people recognized the individual physicians of the State, and raised them to a privileged class, distinguished from their fellow-citizens by the possession of certain rights and privileges, duties and responsibilities. Chief among these rights was that of assembling and organizing State and County Medical Societies, into whose hands was placed the entire responsibility of the profession of the future. This control of the future of our profession was provided for by a grant of authority to our State and County Medical Societies, to enact by-laws for the government of their members, relating to the granting of licenses to practice, and to the conditions upon which members were in the future to be admitted to such societies.

The reciprocal character of the relation thus created is shown on the one side by the preamble of the medical law, "Whereas, well-regulated medical societies have been found to contribute to the diffusion of true science and particularly the knowledge of the healing art," supplemented by the fact that the State spent its funds by the hundreds of thousands of dollars in aid of medical institutions ; and on the other side, is indicated by the following form of oath prescribed by the State Medical Society, to be taken by each physician upon qualifying : "I, A. B., do solemnly declare that I will honestly, virtuously, and chastely conduct myself in the practice of physic and surgery, with the privilege of exercising which profession I am now to be invested, and that I will with fidelity and honor do every thing in my power for the benefit of the sick committed to my charge."

What the profession thought of itself, of its duties to the people, and the duties of its individual members, etc., to each other is shown by its code of ethics, which can without doubt claim to be the code of the noblest of the professions, by which the profession of this State was governed from the year 1807 to the year 1849.

The discipline which should be exercised upon members and the relations which they

should hold to each other are indicated by the following :

“Any member of the said society who may have been convicted of any serious offence against the laws of the State or of the United States, or who may be guilty of gross immorality, or who shall have improper pretensions to any specific or nostrum, or who shall be repeatedly guilty of improper conduct in the duties of his profession, or his behavior in this society, may be expelled at an anniversary meeting upon a vote of two thirds of the members present.”

“Honor and justice particularly forbid a medical practitioner infringing upon the rights and privileges of another who is legally accredited, and whose character is not impeached by public opinion or civil or medical authority, whether he be a native or a stranger settled in the country. There is no difference between physicians but such as result from their personal talents, medical acquirements, or their experience ; and the public, from the services they receive, are the natural judges of these intellectual advantages.”

The relations which the individual physician, and the corporate profession should maintain to the people are shown by the form of the novice's oath above quoted, and by the following:

“A physician in indigent circumstances is not permitted to embrace or exercise any business which would degrade the character of his profession. \* \* \* Any low trade or servile, mercenary occupation is incompatible with the dignity and independence of medical avocations. In such extreme and derogatory situations a physician forfeits the privileges of his profession. \* \* \*

“The importance of the medical profession requires that it should be exercised with fidelity to its scientific principles and approved doctrines, with honor to all its members, and with justice and humanity to the sick. A departure from the above principles constitutes quackery, which degrades the medical character by ignorance, artifice, unapproved methods of practice, and by the use of remedies dangerous to health and life. \* \* \*

In urgent cases of sickness, or of injuries occasioned by accidents, a call for medical or surgical help should be obeyed immediately, unless such compliance should be to the detriment of some other sufferer. \* \* \*

“An accidental injury is distress, and help for a human being in distress is claimed by the laws of nature. \* \* \* And whereas it is inconsistent with the dignity of the medical

profession for physicians and surgeons in their corporate capacity to arrange and fix professional charges, be it therefore further ordained, that any member of this society who shall hereafter be guilty of promoting, favoring, or encouraging the members of any medical society in their corporate capacity to form, support, and fix medical charges, and who shall be convicted thereof before the said medical society at an anniversary meeting, to the satisfaction of a majority of the members present, shall be expelled from the society, and shall forever after be debarred from being received as a member thereof. \* \* \* Public opinion in civilized nations and among the more enlightened classes of society, will always highly estimate and liberally compensate medical services."

The above fairly indicate the reciprocal relations which the fathers of medicine held should and did exist between the people and the medical profession, and also plainly enunciates the principles which would direct the profession in the control and discipline of its own members. Because of the intelligent discrimination exercised and exhibited in this code, of its generous and catholic spirit, of its temperate and moderate assertion, of its laudable ambition, it may well claim to be the code of the medical profession



of its time,—the code of one of the noblest of the professions.

Comparatively early in the history of the profession of our State, there began the operation of causes the tendency of which was to lower the personnel of the medical profession. Of the nature of the said tendency it is sufficient for us at present to remember, that the responsibilities for the evil and its results rest entirely with the profession. The wrong methods were of our own introduction, and prominent members of the profession from time to time gave warning of the fatal weakness of our system, and of the inevitable disaster that must follow its pursuit.

In 1824, our State Medical Society took notice of the small cloud upon our horizon in the adoption of the following: “Resolved, That in the opinion of this society, the increase of medical colleges in this State is not required for the public good; and that it would be decidedly injurious to the best interests of the profession at present to charter any additional medical schools.” In 1826, the cloud had grown to more positive proportions, and the address of the president for that year says: “We are constituted by law the guardians of the public interests, in so far as those interests can be affected by medical education, and to

what extent such responsibility reaches, I almost fear to say,—let conscience answer.

\* \* \* Unless this society suggest some decisive measures to arrest this wholesale manufacture of physicians, by more particularly determining the qualifications which shall admit to license in this State, the consequences must be alike disastrous to the respectability of the profession and the interests of the public.” In speaking of the remedy for this situation, this far-seeing man suggests as the one most easy, most effectual, “a positive law which shall separate the license from the degree. \* \* \*

The separation of licenses from degrees appears to be the more necessary, since to the inordinate multiplication of them almost all the faults of early medical education are justly chargeable. \* \* \*

This practice has grown into an abuse, which nothing but a repeal of that section of the Act which gives to the diploma the rights of license can effectually correct.”

The writer is of the opinion that this question of codes cannot be intelligently considered without keeping in mind, that we are accountable for the introduction of this faulty method of licensing physicians ; that its malign influence was apparent in 1824, and is still at work ;

and that it is to this influence that we must charge the fact, that to-day our profession is regarded by the State as only a numerically strong medical sect.

Notwithstanding frequent warnings, this wholesale distribution of medical diplomas went unchecked, and in 1849 a new code of ethics was adopted containing much that was previously stated in the existing code, but also containing at least two important departures from that standard. Of these departures, the one pertained to the relations which should exist between physicians in regard to consultations, and the other authorized the fixing of fee bills in every town or district.

The consultation clause forbade the recognition as physicians of all those whose practice was based upon an exclusive dogma.

The writer cannot find in the rationale of these two clauses of the code of 1849, that intelligent discrimination and high professional purpose which characterized the code of our earlier times.

Neither is there the evidence of the existence of that reciprocal relation and confidence which was the prominent feature of the early professional status. But in both clauses, and from both points of view, there is the most

unmistakable tendency to develop trade instincts and trade provisions. As an instance of trade policy, there was method in refusing to recognize physicians, who held unapproved doctrines and were candidates for the patronage we had monopolized. As a stroke of commercial policy, this act was materially strengthened by revolutionizing the relations of the profession concerning fees, by the fixing of fee-bills, and by the placing of a trade value upon every possible professional act or service.

It is a most remarkable instance of consistent sociological development that the sale of licenses to practise a learned profession, the formation of offensive and defensive guilds, and the imposition of a money value upon each professional act, should follow each other in close and rapid sequence.

To what extent the commercial spirit of the age has invaded and degraded the medical profession, we can partially realize when we contrast the professional utterance of our early code : "Whereas it is inconsistent with the dignity of the medical profession for physicians and surgeons in their corporate capacity to arrange and fix professional charges," with the smart and tradesman like fee-bills authorized by the American Medical Association.

There can be no question in the mind of any one who will take the trouble to study the situation, that the well-being of a body of medical men, for instance of the medical corps of the United States Army, can only be permanently and continuously advanced by having the policy of that corps in harmony with the policy of the government. That which is true of the Medical Corps of the United States Army, is in many senses equally true of the general profession of the State.

The one can no more successfully maintain a position of insubordination and defiance than could the other.

The people authorized the medical profession, granted the class numerous peculiar privileges, spent upon the institutions of the profession hundreds of thousands of dollars of the public money, always under the plea that the profession existed only for the good of the people. The government not only placed the comfort, the health, and the lives of the people in the care of the early profession of our State, but more than this, the then members of the profession were given the authority to say who should be their associates and successors. The sequel is probably more instructive than pleasing. In one word, the profession was false to itself, and

betrayed the trust and the confidence of the people. The people asked and were taxed for a learned and honorable profession, and we gave them half-learned, unlearned members of a lucrative trade. Inasmuch as we were responsible for all that came into the profession, it does us no good to attempt to comfort ourselves in the contemplation of the honorable exceptions, the truly professional ; we had the power to see that they were all learned, competent, and honorable, and we well know that many could not so be called.

The people were patient and long-suffering, but in 1857 they took a review of the situation, and, as a result of that review, they came to the conclusion that certain homœopaths were equally entitled to confidence with ourselves. There are those who construe this act of the people as a verdict of lack of confidence in the science of medicine. To the writer it would seem to be more properly regarded as a repudiation of the existing system of licensing physicians. From the date last mentioned there has been open and actual insubordination in the medical corps of this State. A majority of the original corps refer to the members admitted by the act of 1857 as interlopers, refusing to give them the recognition and the rights which the people



have already bestowed upon them, under the allegation that they are either fools or knaves.

For more than a quarter of a century the profession in this State have attempted to maintain, in the interest of trade, the following dubious propositions :

That it was professional to engage in the wholesale manufacture of physicians, regardless of their fitness to discharge the duties of that profession.

That any person holding a diploma from a medical school, and subscribing to the code of ethics of the American Medical Association, must necessarily be a worthy exponent of the science and art of medicine, and as such entitled to the full confidence of the public.

That any person holding other beliefs than those held by the American Medical Association, and not subscribing to its code, no matter what his credentials or qualifications, must be either a fool or a knave.

That the right to practise medicine is above and beyond the action of common or statute law, and that persons possessing this right may boycott all others whose opinions they do not like, in the name of the American Medical Association.

That the laws of supply and demand should

control the formation of medical schools and the manufacture of physicians, the same as commercial commodities in general.

That the people have no right to the services of physicians, except upon such terms and under such conditions as the latter may dictate, and that it is quite proper to set a trade value upon all professional acts and services.

That the existence of a small minority of physicians, who exhibited the qualities of professional gentlemen, warranted the claim that ours is a learned and honorable profession, worthy of all confidence and support, and that all other aspirants for such support are either fools or knaves.

That it is unscientific and improper for members of the medical profession, to accept the opportunities of reviewing the results of the management of disease by methods different from our own, and that such situations present no possibilities for either making useful observations or of giving useful advice.

That the natural history of disease, uninfluenced by treatment, is not a proper subject for professional observation.

The writer is aware that the above propositions can be supported by trade arguments, and that from trade premises should receive such

support, but is not aware of any conclusive arguments which have been brought to their support from professional premises, and therefore prefers to hold with the minority, who maintain :—

That the foregoing make a burden too heavy for even the medical profession to carry.

That it is never wise to undertake to hold an untenable position.

That the best good of the medical profession of this State, or of any State, can only be gained by the maintenance of the reciprocal relations of trust and confidence between the profession and the government (the people).

That the medical law of this State becomes a part of the constitution of each incorporated medical society in the State, and that the by-laws of any society cannot be inconsistent with the constitution of the same.

That it is unlawful and inexpedient to characterize a class of physicians as fools or knaves, to whom the laws refer as entitled to all the rights and privileges of the practice of physic and surgery in this State.

That the power to elevate and dignify the medical profession can only come from the people, and that such authority is not likely to be bestowed upon a corps in actual insubordination.

That to recognize a person as a physician does not require either recognition or endorsement of his beliefs or opinions, but is simply to admit what the law says concerning him.

That the influences of trade upon the medical profession are in every way subversive and opposed to its true interests ; and that such influences should not be fostered or encouraged, especially by our code of ethics.



## APPENDIX.

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### A

## CODE OF ETHICS OF THE AMERICAN MEDICAL ASSOCIATION.

OF THE DUTIES OF PHYSICIANS TO THEIR PATIENTS, AND OF THE OBLIGATIONS OF PATIENTS TO THEIR PHYSICIANS.

### ART. I.—*Duties of physicians to their patients.*

§ 1. A PHYSICIAN should not only be ever ready to obey the calls of the sick, but his mind ought also to be imbued with the greatness of his mission, and the responsibility he habitually incurs in its discharge. Those obligations are the more deep and enduring, because there is no tribunal, other than his own conscience, to adjudge penalties for carelessness or neglect. Physicians should, therefore, minister to the sick with due impressions of the importance of their office ; reflecting that the ease, the health, and the lives of those committed to their charge, depend on their skill, attention, and fidelity. They should study, also, in their deportment, so to unite *tenderness* with *firmness*, and *condescension* with *authority*, as to inspire the minds of their patients with gratitude, respect, and confidence.

§ 2. Every case committed to the charge of a physician should be treated with attention, steadiness, and humanity. Reasonable indulgence should be granted to the mental imbecility and caprices of the sick. Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed ; and the familiar and confidential intercourse to which physicians are admitted in their professional visits, should be used with discretion, and with the most scrupulous regard to fidelity and honor. The obligation of secrecy extends beyond the period of professional services ; none of the privacies of personal and domestic life, no infirmity of disposition or flaw of



character observed during professional attendance, should ever be divulged by the physician, except when he is imperatively required to do so. The force and necessity of this obligation are indeed so great, that professional men have, under certain circumstances, been protected in their observance of secrecy by courts of justice.

§ 3. Frequent visits to the sick are in general requisite, since they enable the physician to arrive at a more perfect knowledge of the disease, to meet promptly every change which may occur, and also tend to preserve the confidence of the patient. But unnecessary visits are to be avoided, as they give useless anxiety to the patient, tend to diminish the authority of the physician, and render him liable to be suspected of interested motives.

§ 4. A physician should not be forward to make gloomy prognostications, because they savor of empiricism, by magnifying the importance of his services in the treatment or cure of the disease. But he should not fail, on proper occasions, to give to the friends of the patient timely notice of danger when it really occurs; and even to the patient himself, if absolutely necessary. This office, however, is so peculiarly alarming when executed by him, that it ought to be declined whenever it can be assigned to any other person of sufficient judgment and delicacy. For the physician should be the minister of hope and comfort to the sick; that, by such cordials to the drooping spirit, he may smooth the bed of death, revive expiring life, and counteract the depressing influence of those maladies which often disturb the tranquillity of the most resigned in their last moments. The life of a sick person can be shortened not only by the acts but also by the words or the manner of a physician. It is, therefore, a sacred duty to guard himself carefully in this respect, and to avoid all things which have a tendency to discourage the patient and to depress his spirits.

§ 5. A physician ought not to abandon a patient because the case is deemed incurable; for his attendance may continue to be highly useful to the patient and comforting to the relatives around him, even in the last period of a fatal malady, by alleviating pain and other symptoms, and by soothing mental anguish. To decline attendance, under such circumstances, would be sacrificing to fanciful delicacy and mistaken liberality, that moral duty which is independent of and far superior to all pecuniary consideration.

§ 6. Consultations should be promoted in difficult or protracted cases, as they give rise to confidence, energy, and more enlarged views in practice.

§ 7. The opportunity which a physician not unfrequently enjoys of promoting and strengthening the good resolutions of his patients, suffering under the consequences of vicious conduct, ought never to be neglected. His counsels, or even remonstrances, will give satisfaction, not offence, if they be proffered with politeness, and evince a genuine love of virtue, accompanied by a sincere interest in the welfare of the person to whom they are addressed.

ART. II.—*Obligations of patients to their physicians.*

§ 1. The members of the medical profession, upon whom is enjoined the performance of so many important and arduous duties toward the community, and who are required to make so many sacrifices of comfort, ease, and health, for the welfare of those who avail themselves of their services, certainly have a right to expect and require, that their patients should entertain a just sense of the duties which they owe to their medical attendants.

§ 2. The first duty of a patient is, to select as his medical adviser one who has received a regular professional education. In no trade or occupation do mankind rely on the skill of an untaught artist ; and in medicine, confessedly the most difficult and intricate of the sciences, the world ought not to suppose that knowledge is intuitive.

§ 3. Patients should prefer a physician whose habits of life are regular, and who is not devoted to company, pleasure, or to any pursuit incompatible with his professional obligations. A patient should also confide the care of himself and family, as much as possible, to one physician ; for a medical man who has become acquainted with the peculiarities of constitution, habits, and predispositions of those he attends, is more likely to be successful in his treatment than one who does not possess that knowledge.

A patient who has thus selected his physician, should always apply for advice in what may appear to him trivial cases ; for the most fatal results often supervene on the slightest accidents. It is of still more importance that he should apply for assistance in the forming stage of violent diseases ; it is to a neglect of this precept that medicine owes much of the uncertainty and imperfection with which it has been reproached.

§ 4. Patients should faithfully and unreservedly communicate to their physician the supposed cause of their disease. This is the more important, as many diseases of a mental origin stimulate those

depending on external causes, and yet are only to be cured by ministering to the mind diseased. A patient should never be afraid of thus making his physician his friend and adviser ; he should always bear in mind that a medical man is under the strongest obligations of secrecy. Even the female sex should never allow feelings of shame or delicacy to prevent their disclosing the seat, symptoms, and causes of complaints peculiar to them. However commendable a modest reserve may be in the common occurrences of life, its strict observance in medicine is often attended with the most serious consequences, and a patient may sink under a painful and loathsome disease, which might have been readily prevented had timely intimation been given to the physician.

§ 5. A patient should never weary his physician with a tedious detail of events or matters not appertaining to his disease. Even as relates to his actual symptoms, he will convey much more real information by giving clear answers to interrogatories, than by the most minute account of his own framing. Neither should he obtrude upon his physician the details of his business, nor the history of his family concerns.

§ 6. The obedience of a patient to the prescriptions of his physician should be prompt and implicit. He should never permit his own crude opinions, as to their fitness, to influence his attention to them. A failure in one particular may render an otherwise judicious treatment dangerous, and even fatal. This remark is equally applicable to diet, drink, and exercise. As patients become convalescent, they are very apt to suppose that the rules prescribed for them may be disregarded ; and the consequence, but too often, is a relapse. Patients should never allow themselves to be persuaded to take any medicine whatever that may be recommended to them by the self-constituted doctors and doctresses who are so frequently met with, and who pretend to possess infallible remedies for the cure of every disease. However simple some of their prescriptions may appear to be, it often happens that they are productive of much mischief, and in all cases they are injurious, by contravening the plan of treatment adopted by the physician.

§ 7. A patient should, if possible, avoid even the *friendly visits of a physician* who is not attending him ; and when he does receive them, he should never converse on the subject of his disease, as an observation may be made, without any intention of interference,

which may destroy his confidence in the course he is pursuing, and induce him to neglect the directions prescribed to him. A patient should never send for a consulting physician without the express consent of his own medical attendant. It is of great importance that physicians should act in concert ; for, although their modes of treatment may be attended with equal success when employed singly, yet conjointly they are very likely to be productive of disastrous results.

§ 8. When a patient wishes to dismiss his physician, justice and common courtesy require that he should declare his reasons for so doing.

§ 9. Patients should always, when practicable, send for their physician in the morning, before his usual hour of going out ; for, by being early aware of the visits he has to pay during the day, the physician is able to apportion his time in such a manner as to prevent an interference of engagements. Patients should also avoid calling on their medical adviser unnecessarily during the hours devoted to meals or sleep. They should always be in readiness to receive the visits of their physician, as the detention of a few minutes is often of serious inconvenience to him.

§ 10. A patient should, after his recovery, entertain a just and enduring sense of the value of the services rendered him by his physician ; for these are of such a character, that no mere pecuniary acknowledgment can repay or cancel them.

#### OF THE DUTIES OF PHYSICIANS TO EACH OTHER, AND TO THE PROFESSION AT LARGE.

##### ART. I.—*Duties for the support of professional character.*

§ 1. Every individual, on entering the profession—as he becomes thereby entitled to all its privileges and immunities—incurs an obligation to exert his best abilities to maintain its dignity and honor, to exalt its standing, and to extend the bounds of its usefulness. He should, therefore, observe strictly such rules as are instituted for the government of its members :—should avoid all contumelious and sarcastic remarks relative to the faculty, as a body ; and while, by unwearied diligence, he resorts to every honorable means of enriching the science, he should entertain a due respect for his seniors, who have, by their labors, brought it to the elevated condition in which he finds it.

§ 2. There is no profession, from the members of which greater purity of character and a higher standard of moral excellence are required, than the medical ; and to attain such eminence is a duty every physician owes alike to his profession and to his patients. It is due to the latter, as without it he cannot command their respect and confidence ; and to both, because no scientific attainments can compensate for the want of correct moral principles. It is also incumbent upon the faculty to be temperate in all things, for the practice of physic requires the unremitting exercise of a clear and vigorous understanding ; and on emergencies—for which no professional man should be unprepared—a steady hand, an acute eye, and an unclouded head may be essential to the well-being, and even to the life, of a fellow-creature.

§ 3. It is derogatory to the dignity of the profession to resort to public advertisements, or private cards, or handbills, inviting the attention of individuals affected with particular diseases—publicly offering advice and medicine to the poor gratis, or promising radical cures ; or to publish cases and operations in the daily prints, or suffer such publications to be made ; to invite laymen to be present at operations, to boast of cures and remedies, to adduce certificates of skill and success, or to perform any other similar acts. These are the ordinary practices of empirics, and are highly reprehensible in a regular physician.

§ 4. Equally derogatory to professional character is it for a physician to hold a patent for any surgical instrument or medicine, or to dispense a secret *nostrum*, whether it be the composition or exclusive property of himself or of others. For, if such *nostrum* be of real efficacy, any concealment regarding it is inconsistent with beneficence and professional liberality ; and if mystery alone give it value and importance, such craft implies either disgraceful ignorance or fraudulent avarice. It is also reprehensible for physicians to give certificates attesting the efficacy of patent or secret medicines, or in any way to promote the use of them.

## ART. II.—*Professional services of physicians to each other.*

§ 1. All practitioners of medicine, their wives, and their children while under the paternal care, are entitled to the gratuitous services of any one or more of the faculty residing near them, whose assistance may be desired. A physician afflicted with disease is usually an in-



competent judge of his own case ; and the natural anxiety and solicitude which he experiences at the sickness of a wife, a child, or any one who by the ties of consanguinity is rendered peculiarly dear to him, tend to obscure his judgment, and produce timidity and irresolution in his practice. Under such circumstances medical men are peculiarly dependent upon each other, and kind offices and professional aid should always be cheerfully and gratuitously afforded. Visits ought not, however, to be obtruded officiously ; as such unasked civility may give rise to embarrassment, or interfere with that choice on which confidence depends. But if a distant member of the faculty whose circumstances are affluent request attendance, and an honorarium be offered, it should not be declined ; for no pecuniary obligation ought to be imposed, which the party receiving it would wish not to incur.

ART. III.—*Of the duties of physicians as respects vicarious offices.*

§ 1. The affairs of life, the pursuit of health, and the various accidents and contingencies to which a medical man is peculiarly exposed, sometimes require him temporarily to withdraw from his duties to his patients, and to request some of his professional brethren to officiate for him. Compliance with this request is an act of courtesy which should always be performed with the utmost consideration for the interest and character of the family physician, and when exercised for a short period, all the pecuniary obligations for such service should be awarded to him. But if a member of the profession neglect his business in quest of pleasure and amusement, he cannot be considered as entitled to the advantages of the frequent and long-continued exercise of this fraternal courtesy, without awarding to the physician who officiates the fees arising from the discharge of his professional duties.

In obstetrical and important surgical cases, which give rise to unusual fatigue, anxiety, and responsibility, it is just that the fees accruing therefrom should be awarded to the physician who officiates.

ART. IV.—*Of the duties of physicians in regard to consultations.*

§ 1. A regular medical education furnishes the only presumptive evidence of professional abilities and requirements, and ought to be the only acknowledged right of an individual to the exercise and honors of his profession. Nevertheless, as in consultations the good



of the patient is the sole object in view, and this is often dependent on personal confidence, no intelligent regular practitioner, who has a license to practise from some medical board of known and acknowledged respectability, recognized by the American Medical Association, and who is in good moral and professional standing in the place in which he resides, should be fastidiously excluded from fellowship, or his aid refused in consultation, when it is requested by the patient. But no one can be considered as a regular practitioner, or a fit associate in consultation, whose practice is based on an exclusive dogma, to the rejection of the accumulated experience of the profession, and of the aids actually furnished by anatomy, physiology, pathology, and organic chemistry.

§ 2. In consultations no rivalry or jealousy should be indulged ; candor, probity, and all due respect should be exercised toward the physician having charge of the case.

§ 3. In consultations, the attending physician should be the first to propose the necessary questions to the sick ; after which the consulting physician should have the opportunity to make such further inquiries of the patient as may be necessary to satisfy him of the true character of the case. Both physicians should then retire to a private place for deliberation ; and the one first in attendance should communicate the directions agreed upon to the patient or his friends, as well as any opinions which it may be thought proper to express. But no statement or discussion of it should take place before the patient or his friends, except in the presence of all the faculty attending, and by their common consent ; and no *opinions* or *prognostications* should be delivered, which are not the result of previous deliberation and concurrence.

§ 4. In consultations, the physician in attendance should deliver his opinion first ; and when there are several consulting, they should deliver their opinion in the order in which they have been called in. No decision, however, should restrain the attending physician from making such variation in the mode of treatment, as any subsequent unexpected change in the character of the case may demand. But such variation, and the reasons for it, ought to be carefully detailed at the next meeting in consultation. The same privilege belongs also to the consulting physician if he is sent for in an emergency, when the regular attendant is out of the way, and similar explanations must be made by him at the next consultation.

§ 5. The utmost punctuality should be observed in the visits of

physicians when they are to hold consultation together, and this is generally practicable, for society has been considerate enough to allow the plea of a professional engagement to take precedence of all others, and to be an ample reason for the relinquishment of any present occupation. But as professional engagements may sometimes interfere and delay one of the parties, the physician who first arrives should wait for his associate a reasonable period, after which the consultation should be considered as postponed to a new appointment. If it be the attending physician who is present, he will, of course, see the patient and prescribe ; but if it be the consulting one, he should retire, except in case of emergency, or when he has been called from a considerable distance, in which latter case he may examine the patient, and give his opinion in *writing* and *under seal* to be delivered to his associate.

§ 6. In consultations, theoretical discussions should be avoided, as occasioning perplexity and loss of time. For there may be much diversity of opinion concerning speculative points, with perfect agreement in those modes of practice which are founded, not on hypothesis, but on experience and observation.

§ 7. All discussions in consultation should be held as secret and confidential. Neither by words nor manner should any of the parties to a consultation assert or insinuate that any part of the treatment pursued did not receive his assent. The responsibility must be equally divided between the medical attendants—they must equally share the credit of success as well as the blame of failure.

§ 8. Should an irreconcilable diversity of opinion occur when several physicians are called upon to consult together, the opinion of the majority should be considered as decisive, but if the numbers be equal on each side, then the decision should rest with the attending physician. It may, moreover, sometimes happen that two physicians cannot agree in their views of the nature of a case, and the treatment to be pursued. This is a circumstance much to be deplored, and should always be avoided, if possible, by mutual concessions, as far as they can be justified by a conscientious regard for the dictates of judgment. But in the event of its occurrence, a third physician should, if practicable, be called to act as umpire ; and, if circumstances prevent the adoption of this course, it must be left to the patient to select the physician in whom he is most willing to confide. But as every physician relies upon the rectitude of his judgment, he should, when left in the minority, politely and consistently retire

from any further deliberation in the consultation, or participation in the management of the case.

§ 9. As circumstances sometimes occur to render a *special consultation* desirable, when the continued attendance of two physicians might be objectionable to the patient, the member of the faculty whose assistance is required in such cases should sedulously guard against all future unsolicited attendance. As such consultations require an extraordinary portion both of time and attention, at least a double honorarium may be reasonably expected.

§ 10. A physician who is called upon to consult should observe the most honorable and scrupulous regard for the character and standing of the practitioner in attendance; the practice of the latter, if necessary, should be justified as far as it can be consistently with a conscientious regard for truth, and no hint or insinuation should be thrown out which could impair the confidence reposed in him, or affect his reputation. The consulting physician should also carefully refrain from any of those extraordinary attentions or assiduities, which are too often practised by the dishonest for the base purpose of gaining applause, or ingratiating themselves into the favor of families and individuals.

#### ART. V.—*Duties of physicians in cases of interference.*

§ 1. Medicine is a liberal profession, and those admitted into its ranks should found their expectations of practice upon the extent of their qualifications, not on intrigue or artifice.

§ 2. A physician in his intercourse with a patient under the care of another practitioner, should observe the strictest caution and reserve. No meddling inquiries should be made; no disingenuous hints given relative to the nature and treatment of his disorder; nor any course of conduct pursued that may directly or indirectly tend to diminish the trust reposed in the physician employed.

§ 3. The same circumspection and reserve should be observed when, from motives of business or friendship, a physician is prompted to visit an individual who is under the direction of another practitioner. Indeed, such visits should be avoided, except under peculiar circumstances; and when they are made, no particular inquiries should be instituted relative to the nature of the disease, or the remedies employed, but the topics of conversation should be as foreign to the case as circumstances will admit.

§ 4. A physician ought not to take charge of or prescribe for a patient who has recently been under the care of another member of the faculty in the same illness, except in cases of sudden emergency, or in consultation with the physician previously in attendance, or when the latter has relinquished the case, or been regularly notified that his services are no longer desired. Under such circumstances, no unjust and illiberal insinuations should be thrown out in relation to the conduct or practice previously pursued, which should be justified as far as candor and regard for truth and probity will permit ; for it often happens that patients become dissatisfied when they do not experience immediate relief, and as many diseases are naturally protracted, the want of success in the first stage of treatment affords no evidence of a lack of professional knowledge and skill.

§ 5. When a physician is called to an urgent case, because the family attendant is not at hand, he ought, unless his assistance in consultation be desired, to resign the care of the patient to the latter immediately on his arrival.

§ 6. It often happens, in cases of sudden illness or of recent accidents and injuries, owing to the alarm and anxiety of friends, that a number of physicians are simultaneously sent for. Under these circumstances courtesy should assign the patient to the first who arrives, who should select from those present any additional assistance that he may deem necessary. In all such cases, however, the practitioner who officiates should request the family physician, if there be one, to be called, and, unless his further attendance be requested, should resign the case to the latter on his arrival.

§ 7. When a physician is called to the patient of another practitioner, in consequence of the sickness or absence of the latter, he ought, on the return or recovery of the regular attendant, and with the consent of the patient, to surrender the case.

[The expression, " Patient of another Practitioner," is understood to mean a patient who may have been under the charge of another practitioner at the time of the attack of sickness, or departure from home of the latter, or who may have called for his attendance during his absence or sickness, or in any manner given it to be understood that he regarded the said physician as his regular medical attendant.

§ 8. A physician, when visiting a sick person in the country, may be desired to see a neighboring patient who is under the regular direction of another physician, in consequence of some sudden change or aggravation of symptoms. The conduct to be pursued on

such an occasion is to give advice adapted to present circumstances ; to interfere no further than is absolutely necessary with the general plan of treatment ; to assume no future direction, unless it be expressly desired ; and, in this last case, to request an immediate consultation with the practitioner previously employed.

§ 9. A wealthy physician should not give advice *gratis* to the affluent ; because his doing so is an injury to his professional brethren. The office of a physician can never be supported as an exclusively beneficent one, and it is defrauding, in some degree, the common funds for its support, when fees are dispensed with which might justly be claimed.

§ 10. When a physician who has been engaged to attend a case of midwifery is absent, and another is sent for, if delivery is accomplished during the attendance of the latter, he is entitled to the fee, but should resign the patient to the practitioner first engaged.

#### ART. VI — *Of differences between physicians.*

§ 1. Diversity of opinion and opposition of interest, may, in the medical as in other professions, sometimes occasion controversy, and even contention. Whenever such cases unfortunately occur, and cannot be immediately terminated, they should be referred to the arbitration of a sufficient number of physicians, or a *court-medical*.

§ 2. As peculiar reserve must be maintained by physicians toward the public, in regard to professional matters, and as there exist numerous points in medical ethics and etiquette through which the feelings of medical men may be painfully assailed in their intercourse with each other, and which cannot be understood or appreciated by general society, neither the subject-matter of such differences nor the adjudication of the arbitrators should be made public, as publicity in a case of this nature may be personally injurious to the individuals concerned, and can hardly fail to bring discredit on the faculty.

#### ART. VII.—*Of pecuniary acknowledgments.*

Some general rules should be adopted by the faculty, in every town or district, relative to *pecuniary acknowledgments* from their patients ; and it should be deemed a point of honor to adhere to these rules with as much uniformity as varying circumstances will admit.



## OF THE DUTIES OF THE PROFESSION TO THE PUBLIC, AND OF THE OBLIGATIONS OF THE PUBLIC TO THE PROFESSION.

ART. I.—*Duties of the profession to the public.*

§ 1. As good citizens, it is the duty of physicians to be ever vigilant for the welfare of the community, and to bear their part in sustaining its institutions and burdens ; they should also be ever ready to give counsel to the public in relation to matters especially appertaining to their profession, as on subjects of medical police, public hygiene, and legal medicine. It is their province to enlighten the public in regard to quarantine regulations—the location, arrangement, and dietaries of hospitals, asylums, schools, prisons, and similar institutions—in relation to the medical police of towns, as drainage, ventilation, etc.—and in regard to measures for the prevention of epidemic and contagious diseases ; and when pestilence prevails, it is their duty to face the danger, and to continue their labors for the alleviation of the suffering, even at the jeopardy of their own lives.

§ 2. Medical men should also be always ready, when called on by the legally constituted authorities, to enlighten coroners' inquests, and courts of justice, on subjects strictly medical—such as involve questions relating to sanity, legitimacy, murder by poisons or other violent means, and in regard to the various other subjects embraced in the science of Medical Jurisprudence. But in these cases, and especially where they are required to make a *post-mortem* examination, it is just, in consequence of the time, labor, and skill required, and the responsibility and risk they incur, that the public should award them a proper honorarium.

§ 3. There is no profession, by the members of which eleemosynary services are more liberally dispensed than the medical ; but justice requires that some limits should be placed to the performance of such good offices. Poverty, professional brotherhood, and certain of the public duties referred to in the first section of this article, should always be recognized as presenting valid claims for gratuitous services ; but neither institutions endowed by the public or by rich individuals, societies for mutual benefit, for the insurance of lives or for analogous purposes, nor any profession or occupation, can be admitted to possess such privilege. Nor can it be justly expected of physicians to furnish certificates of inability to serve on juries, to perform militia duty, or to testify to the state of health of persons



wishing to insure their lives, obtain pensions, or the like, without a pecuniary acknowledgment. But to individuals in indigent circumstances, such professional services should always be cheerfully and freely accorded.

§ 4. It is the duty of physicians, who are frequent witnesses of the enormities committed by quackery, and the injury to health and even destruction of life caused by the use of quack medicines, to enlighten the public on these subjects, to expose the injuries sustained by the unwary from the devices and pretensions of artful empirics and impostors. Physicians ought to use all the influence which they may possess, as professors in Colleges of Pharmacy, and by exercising their option in regard to the shops to which their prescriptions shall be sent, to discourage druggists and apothecaries from vending quack or secret medicines, or from being in any way engaged in their manufacture and sale.

ART. II.—*Obligations of the public to physicians.*

The benefits accruing to the public, directly and indirectly, from the active and unwearied beneficence of the profession, are so numerous and important, that physicians are justly entitled to the utmost consideration and respect from the community. The public ought likewise to entertain a just appreciation of medical qualifications ; to make a proper discrimination between true science and the assumptions of ignorance and empiricism ; to afford every encouragement and facility for the acquisition of medical education ; and no longer to allow the statute-books to exhibit the anomaly of exacting knowledge from physicians, under a liability to heavy penalties, and of making them obnoxious to punishment for resorting to the only means of obtaining it.

# A CODE OF ETHICS.

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## B

REPORTED TO THE MEDICAL SOCIETY OF THE STATE OF NEW YORK,  
FEBRUARY, 1882, BY A COMMITTEE APPOINTED FEBRUARY  
3, 1881, TO REVISE THE CODE OF ETHICS.

Wm. C. Wey, M.D., *Chairman* ; C. R. Agnew, M.D., S. Oakley  
Vanderpoel, M.D., Wm. S. Ely, M.D.; Henry G. Piffard, M.D.,  
*Secretary*.

## CODE OF MEDICAL ETHICS.

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- 1 I. THE RELATIONS OF PHYSICIANS TO THE PUBLIC.
- 2 II. RULES GOVERNING CONSULTATIONS.
- 3 III. THE RELATIONS OF PHYSICIANS TO EACH OTHER.

### 4 I.—*The relations of physicians to the public.*

5 It is derogatory to the dignity and interests of the profession  
6 for physicians to resort to public advertisements, private cards,  
7 or handbills, inviting the attention of individuals affected with  
8 particular diseases, publicly offering advice and medicine to the  
9 poor without charge, or promising radical cures ; or to publish  
10 cases or operations in the daily prints, or to suffer such publi-  
11 cations to be made ; or through the medium of reporters or in-  
12 terviewers, or otherwise, to permit their opinions on medical  
13 and surgical questions to appear in the newspapers ; to invite  
14 laymen to be present at operations ; to boast of cures and  
15 remedies ; to adduce certificates of skill and success ; or to per-  
16 form other similar acts.

17 It is equally derogatory to professional character, and  
18 opposed to the interests of the profession, for a physician to

19 hold a patent for any surgical instrument or medicine, or to  
20 prescribe a secret nostrum, whether the invention or discovery  
21 or exclusive property of himself or of others.

22 It is also reprehensible for physicians to give certificates  
23 attesting the efficacy of patented medical or surgical appliances,  
24 or of patented, copyrighted, or secret medicines, or of pro-  
25 prietary drugs, medicines, wines, mineral waters, health re-  
26 sorts, etc.

27 II.—*Rules governing consultations.*

28 Members of the Medical Society of the State of New York,  
29 and of the medical societies in affiliation therewith, may meet  
30 in consultation legally qualified practitioners of medicine.  
31 Emergencies may occur in which all restrictions should, in  
32 the judgment of the practitioner, yield to the demands of  
33 humanity.

34 To promote the interests of the medical profession and of  
35 the sick, the following rules should be observed in conducting  
36 consultations.

37 The examination of the patient by the consulting physician  
38 should be made in the presence of the attending physician,  
39 and during such examination no discussion should take place,  
40 nor any remarks as to diagnosis or treatment be made. When  
41 the examination is completed, the physicians should retire to  
42 a room by themselves, and after a statement by the attending  
43 physician, of the history of the case and of his views of its  
44 diagnosis and treatment, each of the consulting physicians,  
45 beginning with the youngest, should deliver his opinion. If  
46 they arrive at an agreement, it will be the duty of the attend-  
47 ing physician to announce the result to the patient, or to  
48 some responsible member of the family, and to carry out the  
49 plan of treatment agreed upon.

50 If in the consultation there is found to be an essential dif-  
51 ference of opinion as to diagnosis or treatment, the case  
52 should be presented to the patient, or some responsible mem-  
53 ber of the family, as plainly and intelligently as possible, to  
54 make such choice, or pursue such course, as may be thought  
55 best.

56 In case of acute, dangerous, or obscure illness, the consult-  
57 ing physician should continue his visits at such intervals as  
58 may be deemed necessary by the patient or his friends, by him,  
59 or by the attending physician.

60 The utmost punctuality should be observed in the visits of  
61 physicians when they are to hold consultations, but as profes-  
62 sional engagements may interfere or delay one of the parties,  
63 the physician who first arrives should wait for his associate a  
64 reasonable period, after which the consultation should be con-  
65 sidered as postponed to a new appointment. If it be the  
66 attending physician who is present, he will of course see the  
67 patient and prescribe, but if it be the consulting physician, he  
68 should retire, except in an emergency, or when he has been  
69 called from a considerable distance, in which latter case he  
70 may examine the patient, and give his opinion in writing, and  
71 under seal, to be delivered to his associate.

72 III.—*The relations of physicians to each other.*

73 All practitioners of medicine, their wives, and their children  
74 while under paternal care, are entitled to the gratuitous services  
75 of any one or more of the faculty residing near them, whose  
76 assistance may be desired.

77 Gratuitous attendance cannot however be expected from physi-  
78 cians called from a distance, nor need it be deemed obligatory  
79 when opposed by both the circumstances and the preferences  
80 of the patient.

81 The affairs of life, the pursuit of health, and the various  
82 accidents and contingencies to which a medical man is peculiarly  
83 exposed, may require him temporarily to withdraw from his  
84 duties to his patients, and to request some of his professional  
85 brethren to officiate for him. Compliance with this request is  
86 an act of courtesy which should always be performed with the  
87 utmost consideration for the interests and character of the  
88 family physician, and when exercised for a short period, all the  
89 pecuniary obligations for such service should be awarded to him.  
90 But if a member of the profession neglect his business in quest  
91 of pleasure and amusement, he cannot be considered as en-  
92 titled to the advantages of the frequent and long-continued ex-

93 ercise of this fraternal courtesy without awarding to the physi-  
94 cian who officiates, the fees arising from the discharge of his  
95 professional duties.

96 In obstetrical and important surgical cases, which give rise  
97 to unusual fatigue, anxiety, and responsibility, it is just that the  
98 fees accruing therefrom should be awarded to the physician  
99 who officiates.

100 Diversity of opinion and opposition of interest may, in the  
101 medical as in other professions, occasion controversy and even  
102 contention. Whenever such cases unfortunately occur, and  
103 cannot be immediately terminated, they should be referred to  
104 the arbitration of a sufficient number of physicians before  
105 appealing to a medical society or the law, for settlement.

106 If medical controversies are brought before the public in  
107 newspapers or pamphlets, by contending medical writers, and  
108 give rise to or contain assertions or insinuations injurious to  
109 the personal character or professional qualifications of the  
110 parties, the effect is to lower in the estimation of the public,  
111 not only the parties directly involved, but also the medical pro-  
112 fession as a whole. Such publications should therefore be  
113 brought to the notice of the County societies having jurisdiction,  
114 and discipline inflicted, as the case may seem to require.

At the meeting of the State Medical Society in February, 1882,  
Dr. D. B. ST. JOHN ROOSA, of New York, offered the following :

## C

### SUBSTITUTE FOR THE REPORT OF THE SPECIAL COMMITTEE ON AMENDMENTS TO THE SYSTEM OF MEDICAL ETHICS.

The Medical Society of the State of New York, in view of the  
apparent sentiment of the profession connected with it, hereby adopts  
the following declaration, to take the place of the formal code of  
ethics, which has up to this time been the standard of the profession  
in this State :

With no idea of lowering, in any manner, the standard of right and  
honor in the relations of physicians to the public, and to each other,  
but, on the contrary, in the belief that a larger amount of discretion  
and liberty in individual action, and the abolition of detailed and

specific rules, will elevate the ethics of the profession, the medical profession of the State of New York, as here represented, hereby resolve and declare, that the only ethical offences for which they claim and promise to exercise the right of discipline, are those comprehended under the commission of acts unworthy a physician and a gentleman.

*Resolved*, Also, that we enjoin the county societies and other organizations in affiliation with us, that they strictly enforce the requirements of this code.

The substitute received 40 votes, while 38 were cast against it. The report of the Committee, the New Code, was then adopted by a vote of 52 to 18.

At the meeting of 1883, a series of resolutions presented by Dr. Squibb, which virtually repealed the New Code and re-enacted the Old Code, was defeated.

The vote stood 99 for the Old Code to 105 for the New. It requires a two-thirds vote to re-enact the Old Code.

## D

### THE ASSOCIATION FOR PREVENTING THE RE-ENACTMENT IN THE STATE OF NEW YORK OF THE PRESENT CODE OF ETHICS OF THE AMERICAN MEDICAL ASSOCIATION.

#### *To the Medical Profession of the State of New York :*

When a considerable number of the members of a learned and liberal profession believe that the rules by which their relations to their colleagues and to the public, have hitherto been regulated have been injurious to the profession and to the community, it is clearly their right and duty to labor for the abolition of such rules, and to state the reasons why they should no longer be enforced.

The Code of Ethics of the American Medical Association, which is now in force, is identical with that which was in force in the Medical Society of the State of New York, and which was abolished at the annual meeting of that Society in February, 1882. It appears from the proceedings which led to the abolition of the code in the State of New York, that there had been a gradually increasing conviction



among its members, that some of the provisions of the code were arbitrary and illiberal, and that a larger liberty should be granted the members of the Society in the performance of their professional duties. After a full discussion of the subject, a vote of the Society was taken, and by a constitutional majority the Old Code was abolished, and a New one was enacted in its place. Among those who voted for the substitution of the New Code for the Old one were many members who preferred the abolition of a specific ethical code, considering any written code as unnecessary for the guidance of an honorable and learned profession. But the members who took this view of the subject were willing to unite with those who were less radical than themselves, in order to secure the abandonment of the most obnoxious features of the Old Code. At the annual meeting of the Society in February, 1883, a strong effort was made by the advocates of the Old Code to undo the work of the previous year and to re-establish in this State the Code of the American Medical Association. For this purpose no exertions were spared to secure the election of delegates who were in favor of the proposed retrograde movement. But the efforts which were then made failed to secure the votes of even a majority of the members of the Society : a two-thirds vote being necessary.

It is well known that a strong effort is now being made, even by coercive measures, to secure in advance such a representation at the meeting of the Society in 1884, as will undo the work which was done in 1882 and 1883. Believing that such action would be injurious to the honor, dignity, and usefulness of the profession, and to the best interests of the community, we earnestly entreat the members of the profession to give the subject their serious consideration, and to use all legitimate means to prevent the re-enactment of the present Code of the American Medical Association by the Medical Society of the State of New York. It appears to us to be particularly important to preserve to each physician perfect liberty to decide with whom he shall act in order to secure the best interests of the sick and the honor of his profession.

The arbitrary rules which have controlled to so large an extent the actions of medical men, and which were originally designed to defeat the efforts of irregular practitioners to gain influence with the community, have signally failed to accomplish the object in view. These rules have not commanded the respect of intelligent men in other professions. They have been regarded as belonging to the same category as the rules by which the various trades-unions have in-

fringed upon the individual liberty of their members, subjecting those who resisted the arbitrary action of the majority to the greatest indignities, pecuniary losses, and even personal sufferings and dangers. We call upon all physicians to unite with us in freeing the profession from this stigma, and in giving to all its members perfect liberty to practise their art in accordance with the dictates of their own consciences, and with the enlightened opinion of intelligent men who are engaged in other pursuits.

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